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LIBERTY UNDER LAW *

"Set before me for a law the way of thy justifications, O Lord, and I will ever seek after it: Give me understanding and I will search thy Law: and I will keep it with my whole heart. . . . I have sworn and I am determined to defend the judgments of thy justice." (Psalm 118; 33, 34, 106).

IN a splendid address delivered last February, the president of the American Bar Association, Frank E. Holman, spoke of the "great heritage in the field of law and government" which we in the United States today enjoy. He rightly described it as a "heritage" for it is not something which we have earned for ourselves, but a personal possession procured for us by men, who, with magnificent vision, have bequeathed it to us for our guardianship and reverent protection. It is only for us to add to this heritage by our own initiative and genius as the occasion offers and warrants; and its basic principle and enlivening force in American jurisprudence is solemnly set forth as LIBERTY UNDER LAW.

We have weighty reasons in the light of actual history to cherish that kind of a hard won inheritance. We have the most impelling motives for watching over it with a jealous eye, the more so when we contemplate the sickening spectacle of nations where liberty is outlawed by statute, because it is regarded as a thing of evil and anarchy, nullifying the efficiency of the state.

* Address delivered by the Most Reverend Patrick A. O'Boyle, D.D., Archbishop of Washington, D.C., at the "Red" Mass of the Guild of Catholic Lawyers in St. Andrew's Church, New York City, Wednesday, September 14, 1949.

Down to the French Revolution the rights and duties of the state and the private citizen under the aegis of Christian tradition and civilization were derived from belief in the dependence of human beings upon God. An entirely new and rationally indefensible principle was confected by the National Assembly of France in 1791, expressed in the article of organic law that the existence and limits of man's natural rights are determinable solely by civil law (a.4), and the only sanction for the abuses of such liberties was that granted by civil law (a.11).

The law in this case, as in others more recent, happened to be the arbitrary edict of a group of individuals, a doctrinaire aristocracy or oligarchy, who were for the nonce the leaders of government—in fact, *the* government. I dare say that in the annals of history it would be impossible to find a more inconsistent and illusory philosophy of law and government than in this wordy and pompous document with its inherent contradiction of total individual independence on the one hand, and the universal supremacy of the state on the other. The new intolerance made concrete in the form of enactments of law, and written in the blood of half a million victims of the Reign of Terror, with a bitter irony, vented its wrath against anyone who had the temerity to exercise in a manner displeasing to its votaries, the very freedoms which it had itself declared to be “the most precious of the rights of man.” This is not an unknown phenomenon in the lives of nations in the present sobering hour of human history. The oft-vaunted “freedom of thought” really comes to this in practice in such lands, that while the group in power is free to think as it pleases, the private citizen is free to think only what his rulers think.

Liberty is one of those realities in human life which, like religion and politics, inevitably summons up emotions and prejudices, and for that reason the subject, let alone the reality itself, has been the prey of much illusory thinking and loose talking. Love of liberty is very, very rarely the pure and disinterested thing that voltairian rhetoricians would have it

to be, and indeed the lovers of liberty have been in the course of history a strange and confusing variety of men. The very men whose names are hallowed as the homeric protagonists of liberty and right are often the first to deny in action what they speak about in thundering accents and passionate appeal. John Locke would deny liberty to men who denied it to others, forgetting that on this very principle he would have to despoil himself of liberty and right. The extremists of the French Revolution were so enraptured with the love of this precious gift, as if it were their own begetting and not the gift of God in the endowments of the rational creature, that they would force liberty down the throats of people who neither desired it nor sought after it, freedom being so precious that it would seem that no man is free to reject it.

Liberty is a divine endowment in man, like the equally divine endowment which Aristotle calls the Active Reason in man. There is liberty in man by God's design and gift precisely because he enjoys the native endowment of reason in the light of which he frames the ordinances which are called laws, and which are the very root and foundation of human liberty. Liberty is therefore not something which a man enjoys by the fact that he is a citizen of this blessed land or any other. It is not the transient creature or quality of accidental national or social condition. It is an attribute which a man enjoys simply and solely *because* he is a man, a creature of rational nature, a PERSON with all that such a dignity embodies as the subject of liberty and right. He is not made competent by any human law in those rights and liberties which are called "natural," for these are the appanage of his rational nature. They are as natural to him as the circulation of his blood and the growth of his body cells by the process of the organic law of his physical being. Man is subject to the laws that govern the physical universe. He is also subject to the laws of the moral universe, the law that is described in the beautiful metaphor as "written in the heart of men" and which itself is the reflection of the Higher Reason and ultimate law of all things, the Mind and Will of God.

The always pressing and actual problem of human liberty and law is that of carefully prescribing the immunities, and more especially of establishing the positive endowments which the human person enjoys in function of law, natural or civil. As the creature of God, living on earth and in time, man finds himself subject at once to the necessity of pursuing a destiny beyond space and time, yet subject to the laws and restraints of earthly living, the observance of which is incumbent upon him for deserving the reward of the life to come. Both of these laws flowing from divine authority and human authority are mediated to him through the human conscience. So he enjoys liberty under law, which conscience enjoins upon him with the ultimate sanction of all law in the eternal law of God.

Liberty, despite the silly exaggerations of some modern existentialist philosophers and others less gross than these, is not a matter of release from all inhibitions, or the total emancipation from all restraint whatsoever, as if authority, human or divine, presented itself as an obstacle to the freedom of a man. Law is not something alien and hostile to liberty as if it were an intruder upon a holy domain, desecrating the temple of the free human spirit. Rather, so intimately is law related to liberty, that liberty itself is unintelligible apart from law. We might compare law to liberty as rails to a locomotive. The thundering locomotives-without-rails on our great highways are a symbol of freedom without the rails of restraint, and the reckless driver of the roadway is the high symbol of the inner rebelliousness of the human being who repudiates law as a wanton constraint upon what he pleases to demand as the fullness of liberty. Law is the ordinance of reason; all right and just law fashioned in wisdom and prudence and justice is the necessary ally for the preservation and protection, if not for the very existence of the precious gift of liberty. A freedom which is sought without reference to law or the ordinances of reason, whatever *then* is supposed to be its source, is the tragic spectacle of wilful and disastrous blindness, the blindness of

those who, having eyes, nevertheless will not see. We have been solemnly warned in Scripture of what befalls when the blind lead the blind.

Freedom is not some imagined escape from obedience. It is on the contrary the august privilege of being obedient to reason as every free act is an obedience to a judgment of reason. Nothing *less* than reason exists to determine the will and the decisions of a man, unless indeed he prefers wantonly to follow the chaotic path of impulse, which does violence to rational nature, or pleases to follow the dark and devious curve of emotion and prejudice instead of the straight road of the enlightened mind.

Law is therefore no foolishly imagined impediment to liberty, or the forger of chains for the enslavement of man. It is not a hostile element at war with human freedom. Law is the intrinsic complement of liberty, so much so that liberty *without* law, a very vocal sentiment among the unwary, is a logical atrocity not to speak of a condition impossible in reality.

We may regard the life of man on earth as following the course of an ellipse in a path about two fixed centers, the center of liberty and the center of law which determine his position at any moment. Leo XIII has described this condition of man in memorable words in the encyclical, "*Libertas*" (parag. 100):

The radical reason for man's need of law is to be found in his own faculty of free choice. That is, the need for harmony between the will and right reason. It is a complete perversion and inversion of the truth to imagine that because a man is free by nature, therefore, he should be exempt from law. If this were the case it would follow that liberty, in order to be really liberty, would have to be loosed from all vital relation with reason. As a matter of fact the very opposite is true: *because* a man is free, *therefore* he must be subject to law.

This is true whether the law in case is natural or human law. Natural law is a beacon for the human legislator. It does not absorb the function of the FRAMER of laws any

more than a beacon takes over the ship which it serves to guide safely through treacherous reefs and shoals. It points the way and leaves men to their exercise of wisdom and prudence and all that is necessary for the work of buttressing human liberties and rights, so that the laws enacted will be effective as means of happiness and concord in human society. In this way, the norm and the rule of liberty of men in society as well as individual life is, in the last analysis, the eternal law of God wrought into the texture of human laws for augmenting and enhancing the heritage of human liberty *under law*.

In such a conception, the state is not a mere policeman settling endless disputes, or an amoral and neutral agency in proposing and promulgating law. Public and social authority itself is subject to the moral law as the instrument of insuring the observance of moral law in the wider arcs of the social life of men in community. The common good is not merely the *material* welfare of citizens. The common good is material and *moral*, and the civil authority legislating in things that concern the common good according to right ordinances of reason and consonant with moral law COMMANDS obedience dictated by human conscience itself.

On this very point Leo XIII says in the same encyclical, "*Libertas*" (parag. 102):

In social life the true essence of liberty does not consist in the fact that every man may do as he pleases: such liberty would tend to complete turmoil and the overthrow of the organized community. Rather, true liberty consists in this that the regime of civil law gives every man fuller freedom to live according to the precepts of the eternal law. Similarly the freedom of those in authority does not consist in their being able to issue commands at their own casual whim. Rather, human laws must get their force from the fact that they are understood to flow from the eternal law and to sanction nothing which is not contained in it as the principle of all law.

In some modern states the civil authority is quite unwilling to admit *any* rights in the individual at all. It is a strange paradox too that the freedom to do good is, if anything, more vehemently denied than the freedom to do evil. We have had long ago our own bitter taste of that kind of law in the colonial history of the United States, providing an interesting illustration of civil authority denying liberty by law, even such simple liberties as the right of a priest, merely as a priest, to set foot upon the land of a state under penalty of death for a second such offense, or the right to keep Saint's days and Christmas for the worship of God, and even such grotesque denials as the right to make mince pies or make music on the Lord's Day. It was precisely this kind of legislation in the several states, which, without doubt, set firmly in the minds of the framers of the American Constitution, the rigorous determination that nothing like this should ever defile the Federal law; and the First Amendment to the Constitution was fashioned to fit that noble conception of true liberty under law. I may add, too, that they certainly had nothing in mind of that vague and useful metaphor of "the wall of separation" with all the delphic meanings that legal imbroglios have later attached to the majestic simplicity of the hallowed document, even to such issues as bus rides and the public milkman.

This commonplace of moral philosophy that there can be no liberty without law, where individual liberty is concerned has RICH analogies in the domain of international relationships. Liberties and rights which are validated solely by expediency are bound to be a failure in the struggle to bring peace to the world. For international liberties, acknowledged everywhere among all men, can have their existence only in international law which receives its sanctions in the agreement and consent of nations mindful of the moral law. Today Communist Russia stands out against the rest of the world, a symbol of IMMORAL brute force, clothed in the iron robes of war. It may be that in the end the only force with which we can meet the situation which she encourages is *moral* force. For there is a

latent yet tremendous force in the human conscience, the endowment of every man, and it would be to lose faith in man's moral nature and the regenerative power of Christianity, to succumb to the inertia of accepting hopelessly the extinction of Christian freedoms which have shaped and formed western civilization under successive generations of Christian makers of the law. Human nature would have to undergo essential modification for that evil hour of surrender to arrive. We have this indefectible confidence that God still rules the universe and His great hand still REACHES OUT OF the darkness shaping men. It may be that we stand sorely in need once again of BEHOLDING the majestic THEOPHANY of Mount Horeb, or CONTEMPLATING the agony of the God of Gethsemane, shuddering in blood and tears at the wilfulness of men betraying the law of the Lord. It may *well* be that we shall have peace again, when once more we shall exhibit in individual and social life the high obediences which are the absolute condition of the liberties that man under God from the beginning was meant to enjoy.

May I invoke upon you, then, this morning the blessing of God for your devotion to the great destiny of law in our land. Our laws have been fashioned by men with reverent fear of God and generous love of man acknowledged as the creature of God. Our laws bear the impress of that hallowed phrase of the American Constitution in which we solemnly and insistently as a nation proclaim our dependence upon God. The spirit of justice and charity breathes in and enlivens our law, and please God may it always be framed in this spirit.

You belong to a vocation which has its own priestly character of mediation in justice between man and man, and man and society, dedicated to the formulation of those liberties and rights which reason proclaims, as well as those which derive from the reverent regard for the dignity of man. May God enlighten you in this holy work, to know the path of rectitude and justice and charity, to the end that men may enjoy even here on earth, the greatest measure of order in felicity and tranquility, which it pleases God to grant to men of good will.

THE STRICT INTERPRETATION OF LAW

THE basis for the law in canon 19 of *The Code of Canon Law* is the concept expressed in part of Rule 15 of the Rules of Law of Pope Boniface VIII, viz., *odia restringi*.¹ According to this concept anything odious in any prevalent sense whatever is to be restricted.² This is true even though at first sight the favorable aspect of an item is emphasized. However, it must be conclusively shown that an item is actually either in itself or in relation to circumstances odious and not favorable. Many privileges which are not laws are subject to strict interpretation although this interpretation is not directly controlled by canon 19. Privileges which are laws³ do not fall at all under the provisions of canon 19.

Canon 19, *Leges quae poenam statuunt, aut liberum iurium exercitium coarctant, aut exceptionem a lege continent, strictae subsunt interpretationi*, must be carefully understood to refer only to laws. It is rather difficult to see how dispensations, indults, and even privileges can be considered under this canon.⁴

Canon 19, however, does not express the legislator's complete idea of strict interpretation of laws. In addition to this canon, the law of canon 23 must be observed.⁵ This latter

¹ R. J. 15 in VI°. *Odia restringi et favores convenit ampliari*.

² The Code does not use the term *lex odiosa* in reference to unfavorable laws. This term, however, is very common in commentators before the Code. Cf. e.g., Schmalzgrueber, *Jus Ecclesiasticum Universum*, (Romae, 1843), lib. I, tit. II, § 1, n. 5; Zallinger, *Institutiones Juris Ecclesiastici*, (Romae, 1832), lib. I, tit. II, § 199.

³ E.g., clerical privileges, cc. 119-122; privilege of exemption, c. 615.

⁴ Cf. Van Hove, *De Legibus Ecclesiasticis*, (Mechliniae-Romae, 1930), p. 308; Michiels, *Normae Generales Juris Canonici*, (Lublin, 1929), vol. I, p. 448, footnote 3.

⁵ In dubio revocatio legis praeexistentis non praesumitur, sed leges posteriores ad priores trahendae sunt et his, quantum fieri possit, conciliandae.

canon is based upon the same concept as canon 19 for a change in the law has traditionally been considered as odious since it disturbs established discipline.⁶ Necessary change in the law is usefully introduced but whenever a doubt exists whether the legislator intended an alteration it is not lawful to abandon the old law.

Canon 6, 2° can also be cited in reference to the strict interpretation of law.⁷ While the text itself of this canon does not directly speak of strict interpretation, allowance is made for such interpretation whenever the present and the former laws are the same. The interpretation of approved authors must be followed.⁸

Strict interpretation of law must be kept carefully separate from restrictive interpretation. The latter is a species of authentic interpretation⁹ while the former is doctrinal. Canonists after the promulgation of *The Code of Canon Law* are generally agreed on the definition of strict interpretation.¹⁰ Cicognani, for instance, says in effect that strict interpretation

⁶ Cf. Ojetti, *Commentarium in Codicem Iuris Canonici*, (Romae, 1927), vol. I, p. 160; Blat, *Commentarium Textus Codicis Iuris Canonici*, (Romae, 1921), vol. I, pp. 107-108; Woywod, *A Practical Commentary on the Code of Canon Law*, (New York, 1925), vol. I, p. 15; Van Hove, *o.c.*, p. 359; Schmalzgrueber, *o.c.*, lib. I, tit. II, § VII, n. 47-48. Cf. also c. 29, *de electione et electi potestate*, I, 6, in VI°. In Roman Law consult D. 1, 3, 28; C. 3, 28, 35.

⁷ *Canones qui ius vetus ex integro referunt, ex veteris iuris auctoritate, atque ideo ex receptis apud probatos auctores interpretationibus, sunt aestimandi.*

⁸ For a satisfactory list of "approved authors", cf. Neuberger, *Canon 6 or The Relation of the Codex Iuris Canonici to Preceding Legislation*, (Washington, 1927), pp. 76-78.

⁹ Cf. c. 17, § 2.

¹⁰ Before the Code the term *interpretatio restrictiva* was frequently used to mean strict interpretation of law. Cf. e.g., Reiffenstuel, *Jus Canonicum*, (Parisii, 1864), lib. I, tit. II, n. 369; Zallinger, *o.c.*, *l.c.*, warns that restrictive interpretation must not be used as to eliminate the law; *cavendum, ne talis fiat restrictio, ut nullo casu lex habeat locum*. Cf. also Suarez, *De Legibus ac Deo Legislatore*, (Neapoli, 1872), lib. VI, c. 5. Much of what Suarez says in this chapter concerns restrictive not strict interpretation of law. For examples in decretal law, cf. e.g., c. 15, X, *de officio et potestate iudicis delegati*, I, 29; cc. 15, 24, X, *de appellationibus, recusationibus et relationibus*, II, 27.

means that the terms of the law are to be interpreted literally according to their proper meaning.¹¹ Ayrinhac says that in strict interpretation the law is not applied to matters which are not clearly included in the text.¹² Augustine says strict interpretation clings to the text paying due regard to the mind of the legislator but mitigating the rigor of the law as far as the reason for the law will permit.¹³ Coronata offers a definition which can be accepted. According to Coronata, strict interpretation means that whenever a term has two or more proper meanings the narrow extension of the term is used.¹⁴

Strict interpretation of law relative to penal legislation as technically understood in canon 19 is impossible unless a term has both a narrow and a broad extension. Not all terms have such double extension. Van Hove¹⁵ and Michiels¹⁶ give examples which help to clarify the text of canon 19.¹⁷ Thus, for instance, entrance into religion in a strict sense means religious profession while in a broad sense the term includes the novitiate. Similarly, the term "religious" can be used broadly in favorable matters while the narrow extension, or strict meaning must be used in penal law. Again, the term "church" can be used both broadly and strictly.

¹¹ *Canon Law*, 2nd. revised edition, (Westminster, no date), p. 615.

¹² *General Legislation in the New Code of Canon Law*, (New York, 1923), p. 125.

¹³ *A Commentary on the New Code of Canon Law*, (St. Louis, 1918), vol. I, p. 98.

¹⁴ *Institutiones Iuris Canonici*, (Taurini, 1928), vol. I, p. 27: *stricta ea dicitur interpretatio quae, ubi verba duplicem aut multiplicem sensum habent proprium, strictiori utitur*. For other definitions of strict interpretation, cf. e.g., Bouuaert-Simenon, *Manuale Iuris Canonici*, (Gandae et Leodii, 1934), tom. I, p. 101; Cocchi, *Commentarium in Codicem Iuris Canonici*, (Taurinorum Augustae, 1931), vol. I, p. 199.

¹⁵ *O.c.*, p. 305.

¹⁶ *O.c.*, p. 445.

¹⁷ Coronata, *o.c.*, p. 27, also offers satisfactory examples. For the old law, cf. Reiffenstuel, *o.c.*, l. c. n. 369: cf. also c. 16, *de sententia excommunicationis, suspensionis et interdicti*, V, II, in VI°.

Canon 19 is a primary rule of interpretation in so far as it refers to specific kinds of law. It is not, however, a primary rule of interpretation in opposition to the fundamental rule found in canon 18.¹⁸ All laws are fundamentally to be interpreted according to their text and context. This is obvious since the will of the legislator is to be found in his law. It is only when a separation is made according to the type of legislation that canon 19 can be used. It follows from this that canon 19 is not actually a criterion or measure to be used when the law is doubtful. Nothing is said in canon 19 about doubtful laws. This matter is adequately dealt with in canon 15¹⁹ where doubtful laws are declared to be not binding. It would therefore be a miscarriage of justice were a doubtful penal law to be applied even in its narrowest or strictest sense.

Canon 19 contains three separate items: penal laws, laws which restrict the free exercise of rights and laws which contain an exception to the law itself. These three items will be considered in order. Finally, a word will be said about a presumption to be used relative to canon 19.

I. PENAL LAWS

Leges quae poenam statuunt . . . strictae subsunt interpretationi.

While the various aspects and types of penal laws are numerous, it is not difficult to consider them under the criterion established in canon 19. Any law which in any way contains a penalty is to be strictly interpreted.²⁰ Laws which are enacted in separate parts of *The Code of Canon Law* are not always to be considered as one law with a penal sanction. Van Hove says²¹ if the same law both prohibits an act and threat-

¹⁸ *Leges ecclesiasticae intelligendae sunt secundum propriam verborum significationem in textu et contextu consideratam.*

¹⁹ *Leges . . . in dubio iuris non urgent.*

²⁰ E.g., privation of Christian burial; c. 1240.

²¹ *O.c.*, p. 309.

ens a penalty the entire law is to be interpreted strictly but if separate laws are found on the same matter only the penal element must be interpreted strictly. This opinion is clearly demonstrable from the text of the Code. The clearest example is found in a comparison of canons 142, 488, 7°, and 2380. In this last mentioned canon clerics and religious are subject to penalties²² for the violation of canon 142.²³ The term "religious" has a narrow and broad extension. Only in the former extension is the term to be used in penal law.²⁴ Hence novices and postulants are exempt from the penalty of canon 2380. Another example where the term "religious" must be used strictly is found in canon 2343, §4 where a penalty is established for physical assault in violation of canons 119 and 614.²⁵

The law found in canon 19, in so far as it refers to penal law, entirely agrees with pre-Code law.²⁶ But this canon clearly renders the opinion of some commentators on the decretals obsolete and without any legal foundation.²⁷ This opinion held that the more atrocious crimes not actually mentioned in penal law could nevertheless be punished.²⁸ No support of this contention is given today even by the extraordinary coercive power conceded to Superiors in canon 2222, §1 where scandal or an unusually grave transgression of a law

²² Clerici vel religiosi mercaturam . . . pro gravitate culpae ab Ordinario coerceantur.

²³ Prohibentur clerici per se vel per alios negotiationem aut mercaturam exercere, etc. Cf. also c. 592.

²⁴ C. 488, 7°. Religiosorum, qui vota nuncuparunt in aliqua religione.

²⁵ Cf. Coronata, *o.c.*, p. 27.

²⁶ Cf. e.g., c. 22, *de electione et electi potestate*, I, 6, in VI°; R. J. 49, in VI°: In poenis benignior est interpretatio facienda. Pope Boniface VIII, however, admitted a broad interpretation of law where the penalty of interdict would otherwise be disregarded. Cf. c. 17, *de sententia excommunicationis, suspensionis et interdicti*, V, 6, in VI°.

²⁷ E.g., Reiffenstuel, *o.c.*, ad reg. XLIX, n. 8.

²⁸ Cf. Michiels, *o.c.*, p. 445, footnote 3; Van Hove, *o.c.*, p. 310.

demands punishment.²⁹ Canon 2222, §1 assumes that a law, although not a penal law, exists.

Nor is the now obsolete opinion of these commentators to be confused with the concession of coercive power in canon 2223, §1.³⁰ There, a penal law is considered to exist permanently and not considered as established for separate and determined cases.

Canon 19 is entirely consonant with the law of canon 2219, §3. There it is enacted that it is not lawful to transfer a penalty from one person to another or from one case to another even though the same reason or a greater reason for punishment is evident.³¹

All types and classifications of penalties fall within the scope of canon 19. Hence all vindictive penalties and censures, all *latae* and *ferendae* penalties, all penal remedies and penances which contain an element of punishment must be strictly interpreted. As Michiels states³² all penal items no matter whether the passive subject of a penalty is concerned or the object of a penal law³³ or the actual penalty contained in the law, all must be interpreted strictly.³⁴

Prohibitions contained in laws are not of themselves penalties. In so far as they constitute restrictions on the free exercise of rights they are properly considered under canon 19 but not under the aspect of penal laws. But, in so far as prohibi-

²⁹ . . . si scandalum forte datum aut specialis transgressionis gravitas id ferat. Cf. Sole, *De Delictis et Poenis*, (Romae, 1920), pp. 63-64.

³⁰ In poenis applicandis iudex nequit poenam determinatam augere, nisi extraordinaria adiuncta aggravantia id exigant.

³¹ Non licet poenam de persona ad personam vel de casu ad casum producere, quamvis par adsit ratio, imo gravior. The doctrine of Suarez can be profitably studied in support of the law herein stated. Cf. Suarez, *o.c.*, lib. VI, c. 3, n. 5-6.

³² *O.c.*, p. 445.

³³ *E.g.*, c. 729.

³⁴ Further benignity on the part of the legislator is contained in canon 2226 where the selection of penal law to be used is determined. This canon, however, is not precisely allied with canon 19 for the exact question of strict interpretation does not arise in canon 2226.

tions are actually penalties they must be mentioned as penal laws. These prohibitions are found both in regard to censures and in regard to vindictive penalties. The prohibition, for instance, to administer the Sacraments is an effect of excommunication.³⁵ Another effect is the prohibition to exercise the right of election.³⁶ Several prohibitions are actually vindictive penalties. An example is the prohibition to exercise the ministry except in a certain church.³⁷ Another example is the prohibition to remain in a certain place or territory.³⁸

Similarly various disqualifications must at times be considered as penalties and as such must be interpreted strictly. Most disqualifications found in the general penal law of the Code are obviously in this category. But such disqualifications, either temporary or perpetual, are discovered in other sections of the Code, for instance, in the law on elections³⁹ and in regard to simoniacal contracts.⁴⁰

Invalidation of acts is also at times a penalty. Whenever this occurs, the law of canon 19 is to be applied.⁴¹

Some prohibitions, disqualifications and invalidations which are contained in *The Code of Canon Law* do not fall under penal law. An excellent example of a prohibition of this kind is found in canon 2222, §2 where a Superior to avoid scandal is authorized to forbid the exercise of the ministry.⁴² This canon distinctly says that such a prohibition does not contain

³⁵ C. 2261, § 1.

³⁶ C. 2265, § 1. Other effects in regard to censures are found e.g., in cc. 2268, § 2; 2270, § 1, § 2; 2271, 2°; 2275, 2°; 2277; 2278, § 1; 2279; 2285, § 3.

³⁷ C. 2298, 1°.

³⁸ C. 2298, 7°. The effects of the various vindictive penalties involving prohibitions can be found in cc. 2300, 2302.

³⁹ Cc. 161; 178.

⁴⁰ C. 729.

⁴¹ E.g., cc. 166; 167, § 2.

⁴² . . . prohibendi clerico exercitium sacri ministerii. Cf. also cc. 641, § 1; 642; 968, § 2; 970; 1956; 2372.

the notion of a penalty. Disqualifications likewise exist for the good of society.⁴³ Invalidationes are similarly found.⁴⁴

Some of these, for example, are contained in the law on religious.⁴⁵

Others may be found in the law on trials.⁴⁶

II. LAWS WHICH RESTRICT THE FREE EXERCISE OF RIGHTS

Leges quae... liberum iurium exercitium coarctant... strictae subsunt interpretationi.

The immediate basis for this part of canon 19 is involved in controversy. The clarity of exposition and practical unanimity of canonists which were found in the treatment of penal laws are absent here. Difficulties of interpretation exist from the very beginning. Hence, according to each one's conception of the scope of this part of canon 19 will be discovered his own opinion of the obligation of adopting strict interpretation. There is, however, a considerable field where controversy should not arise. These points should be considered first.

1) It is obvious that all laws impose an obligation on some one. This is the sacrifice of freedom enjoined on all members of a society. It should be equally obvious that canon 19 has no immediate bearing on the original personal freedom obtained through creation. It is only after relationships in society and with society are formed in one way or another that possible restrictions on this personal liberty may be imposed. As long as these restrictions do not destroy or unduly limit the rights of individuals as individuals no valid claim can be made for strict interpretation of law. Such restrictions are no more than the particularizations of obligations enjoined on the members of a society for the uniform good of all. Such an obligation is the general command to obey the law. In society this can scarcely be alleged as a real abridgment of freedom.

⁴³ E.g., cc. 167, § 1, 1°, 2°; 1757, § 3.

⁴⁴ E.g., cc. 164; 169, § 1, 2°; 1530, § 1, 3°.

⁴⁵ Cc. 555, § 1; 558; 568; 572; 581, § 1.

⁴⁶ E.g., cc. 1892; 1894.

It is clear that to assert personal freedom against the fundamental and general obligation to obey the law is equivalent either to the rejection of the binding force of all law or to the position that all law must be at least broadly interpreted. In this situation no account is made of individual obligations in society.

It is an altogether different situation where essential rights of individuals are at stake. Thus the right to marry, while it has social effects and implications, is an individual right to be protected. Hence, any law which circumscribes this right even though it is clearly necessary or useful for society must be strictly interpreted.

What has just been said in a general way can specifically be applied to Canon Law. When one enters the Church through Baptism he makes as much but no further sacrifice of rights than is demanded by membership in the Church.⁴⁷ Hence, the general obligation to obey the law of the Church is no essential restriction on rights. Restrictions may come through specific laws but not merely by membership in the Church.

2) The restrictions above indicated are not to be confused with the duties one assumes by adopting a specific state of life. Laws which indicate these duties are in no real sense a restriction of freedom. Such laws merely indicate in what way a specific state of life is to be conducted so that the purpose of this state may be properly and usefully achieved. Many laws relating to the clerical and religious life will fall into this category.⁴⁸

3) Further, some relationship is necessary between the person who asserts a right and the object of this right. This is clear enough in any form of society but it is abundantly clear in the Church. No one, for instance, has the right to Ordination, nor has a layman a right to administer strictly ecclesiastical property. Laws, therefore, which establish conditions in

⁴⁷ Cf. c. 87.

⁴⁸ E.g., cc. 124-128; 138; 592-595.

the examples offered are in no sense a restriction of rights. Hence, strict interpretation of these laws is not demanded.

The case is different where an Order is obtained or where the right to administer ecclesiastical property is conceded and one wishes to exercise his right. Laws restricting such exercise are normally an abridgment of freedom and need to be interpreted strictly.

4) Again, laws which are primarily enacted not for discipline but to safeguard salvation are not considered as limiting freedom. Caution, however, must be used, for instance, in laws regarding the prohibition of books. Not all these laws are in the same category. Reference is made here only to laws immediately safeguarding salvation.⁴⁹

5) Laws which indicate how the negligence of another is to be remedied do not fall under canon 19. In no sense does an Archbishop supplying the negligence of a Suffragan in matters of visitation infringe on or limit the latter's rights.⁵⁰ The same is true where the right to act is practically surrendered by negligence.⁵¹

Further use of devolving right may occur even when no negligence is alleged.⁵²

It should, however, be remembered that the time allowed in the law to appoint to offices and benefices is for the most part useful time.⁵³ The determination of such time is a matter of the Superior's conscience in regard to objective difficulties. It would certainly be against the spirit of the law were this idea to be in any way minimized.

⁴⁹ E.g., c. 1399, 2°, 3°, 6°, 7°, 9°. It is admittedly difficult always to determine the primary purpose of a law especially in the matter of prohibition of books.

⁵⁰ Cf. c. 274, 5°.

⁵¹ E.g., 618, § 2, 2°. In decretal law cf. cc. 3-5, X, *de supplenda negligentia praelatorum*, I, 10.

⁵² E.g., c. 432, § 2. *Si Capitulum intra praescriptum tempus . . . quavis de causa, nullum deputaverit, deputatio ad Metropolitam devolvitur.* Cf. also cc. 1433, § 3; 1458, § 1.

⁵³ Cf. c. 35. Cf. also c. 5, *de concessione praebendae et ecclesiae non vacantis*, III, 8.

6) Where two persons have an equal right in law, there is no restriction of a specific right if one puts his right into operation before the other. It is understood, of course, that conditions stated in the law are fulfilled before a right is exercised. Hence, the right conceded to both the Ordinary and the pastor to grant permission to a deacon to baptize solemnly can be exercised without priority.⁵⁴ This is equally true in regard both to the actual assistance at marriage⁵⁵ and granting permission to others to assist.⁵⁶ Other examples could be cited.⁵⁷ The law even permits the private determination of the use of rights where equality exists.⁵⁸

7) Another point to consider is the exercise of presumed permission to act. This is an important point in law and where presumed permission is legitimately used no restriction of rights exists. To use such presumed permission, however, it is necessary that an honest judgment be made in regard to the conditions set down in the law. Otherwise a violation of rights would prevail.

The Code of Canon Law enumerates several instances where presumed permission may be used legitimately. For instance, any priest may baptize solemnly in case of necessity.⁵⁹ A deacon may also presume permission in case of necessity.⁶⁰ Any priest may administer the Sacrament of Extreme Unction in case of necessity.⁶¹ Presumed permission can also be used by any priest to reconcile a violated church which had been blessed but not consecrated.⁶² Necessity is not a condition here.

⁵⁴ Cf. c. 741.

⁵⁵ C. 1094.

⁵⁶ C. 1096, § 2.

⁵⁷ E.g., cc. 205, § 2; 1176, § 3.

⁵⁸ Cf. c. 1459, § 1.

⁵⁹ C. 738, § 1.

⁶⁰ C. 741.

⁶¹ C. 938, § 2.

⁶² C. 1176, § 1.

8) Strict interpretation of law is not demanded whenever the general law and the particular law are considered in the Code of equal obligation or, in point of fact, whenever priority is given to the particular law. Priority of this kind is not to be considered a restriction of rights and, therefore, to be strictly interpreted according to the provisions of canon 19. Rather is such priority of particular law to be considered as integration of the general law. An example illustrative of this statement can be found in canon 1236, §1. There the Code says that a portion of the funeral fee must in certain circumstances be forwarded to the proper pastor of the deceased. Reference is made, however, in the same canon to any particular law which establishes a different norm. This particular law is to be followed.⁶³ Hence where such a law exists, no limitation of the right of the proper pastor can be legally asserted.

9) Substitution in law of one person for another cannot be considered legally as a limitation of the rights of the latter. Such substitution largely occurs when the incumbent of an office is physically or mentally unable to perform his duties.⁶⁴ Normally no difficulty should arise since the law is specific and detailed on the matter of substitution.⁶⁵ Personal substitutions are not considered here.

10) Limitation of rights cannot be properly asserted when an option contained in the law is legitimately exercised. Hence, a pastor's right to bury a parishioner is not limited in the sense of canon 19 when the option to choose another church than the parish church is made.⁶⁶

With the above points in mind, it is easier to consider the controversy in regard to the second part of canon 19. The controversy resolves itself into a delineation of the fundamental

⁶³ *Salvo iure particulari, quoties fidelis non funeratur in ecclesia paroecciali propria, proprio defuncti parrocho debetur portio paroeccialis, etc.*

⁶⁴ Cf. e.g., cc. 313, § 1; 316; 475, § 1.

⁶⁵ Cf. cc. 315; 474; 475, § 2.

⁶⁶ Cf. cc. 1216; 1225.

freedom of man in relation to possible restrictions with a subsequent strict interpretation of these restrictions.

Vermeersch grants the largest possible freedom to man.⁶⁷ He claims that within the limits of the precepts man has free choice to act. Michiels, on the other hand,⁶⁸ maintains that much of this freedom is generic or even negative arising merely from the absence of a divine command to act or to abstain. Of more importance, and in this case, the only liberty to consider is the liberty arising from divine or ecclesiastical law.

While this difference of opinion exists and if followed logically would lead to separate lists of laws to be interpreted strictly, the contested point of the basis of freedom is not radically affected. Vermeersch scarcely would insist upon such wide freedom as would endanger the foundation of society by withdrawing the general notion of obedience to law where distinct obligations are not demonstrated. Van Hove agrees that Vermeersch would limit freedom by precepts particularized in the obligations of the faithful in the Church.⁶⁹ Again, Vermeersch in citing examples⁷⁰ reveals that his actual conception of canon 19 is not greatly different from that of Michiels.

However, whatever may be the actual attitude of Vermeersch, there is little doubt that the opinion of Michiels because of its more detailed basis should be followed.

In reference to canon 19, rights are conceded by the natural law, by divine positive law and by ecclesiastical law. There can be no intention here to set down in complete categories all the rights conceded by these separate laws. It should be sufficient to indicate how the source of these rights is to be

⁶⁷ *Epitome Iuris Canonici*, 5th editio, (Mechliniae-Romae, 1933), tom. I, p. 118.

⁶⁸ *O.c.*, vol. I, p. 446.

⁶⁹ *O.c.*, p. 312.

⁷⁰ *O.c.*, *l.c.*

recognized and how their restriction is to be interpreted. Some few examples might, however, be studied.

The natural law gives to man the fundamental rights he needs to exist as an individual and in society. Hence any law which limits these fundamental rights is to be interpreted strictly. Therefore, laws which hinder his free choice of marriage, or his ability to improve his status through employment, culture and art are all to be strictly interpreted. As far as this type of interpretation is concerned it is of no consequence whether impediments to marriage are perpetual or temporary. All laws embodying these factors are not indeed violations of the natural law but they do contain restrictions which prevent the free exercise of rights.

In this matter, of course, there is admittedly a real necessity or a reasonable utility for the enactment of restrictive laws. Without this foundation such laws would be unjust and devoid of any validity. It is not, however, a matter of private judgment whether justice obtains in these laws for entrance into the society of the State or the Church enjoins upon all the duty of obedience to law.

Rights in the Church are obtained fundamentally through Baptism.⁷¹ These rights are specifically enumerated in separate provisions of *The Code of Canon Law*. There is little need to exhibit a list of these rights for even a cursory study of Canon Law will indicate them.⁷² However, as mentioned above, some selected examples may be useful for study.⁷³

1) The functions reserved to pastors are enumerated in canon 462. This canon, however, contains the clause *nisi aliud iure caveatur*. Therefore, whenever in law this clause is ex-

⁷¹ Cf. c. 87.

⁷² E.g., cc. 531; 538; 682; 853; 1476; 1513; 1687, etc. All invalidating and disqualifying laws are obviously of strict interpretation. Cf. c. 11.

⁷³ Among authors who may be profitably consulted because of the examples they suggest as limitations on rights, cf. Coronata, *o.c.*, vol. I, p. 26; Cicognani, *o.c.*, p. 617; Ayrinhac, *o.c.*, p. 126; Bouuaert-Simenon, *o.c.*, p. 102; Beste, *Introductio in Codicem*, (Collegeville, 1944), p. 83.

emplified, a restriction on the pastor's rights is found.⁷⁴ Canon 462 is better considered as an example of limitations of rights rather than an integration of law since the limitations impinge on a reservation. The clause, *nisi*, etc., however, can be construed as indicating that the reservation of canon 462 with its limitations form the basic law of pastors' rights.

2) A beneficiary enjoys the right to administer the goods or property of his benefice. This is stated in canon 1476. The freedom allowed in this canon may be somewhat abridged by the statutes of a diocese as provided for in canon 1519, §2.

3) The right to enter religious life is admitted in canon 538. Restrictions, however, are found in canon 542 where both invalid and illicit receptions are carefully noted.

4) The right to confess one's sins to any approved confessor is found in canon 905. This right, however, is limited for certain classes of persons in canons 518 and 520. Various reservations of sins are also to be strictly interpreted for they limit the freedom of confession.⁷⁵

5) The right to donate and bequeath is both a natural and a canonical right.⁷⁶ This right, however, is limited in its exercise by various provisions of the Code.⁷⁷

6) Prohibitions which are actually part of penalties must be interpreted strictly. Hence, the right conceded in canon 1646 to file a suit in court⁷⁸ is restricted by the law of canon 1654, §1 which excludes some excommunicates from prosecuting their right.

In all the above examples and generally where a restriction of rights exists in the law, no attention is paid to violation of rights. This point does not arise under the law of canon 19. When violations of rights occur, the matter is beyond the scope of canon 19.

⁷⁴ E.g., several restrictions are contained in c. 462. Cf. e.g. 3°.

⁷⁵ Cf. c. 897.

⁷⁶ C. 1513, § 1.

⁷⁷ Cc. 568; 580, § 3.

⁷⁸ *Quilibet potest in iudicio agere, nisi etc.*

III. LAWS WHICH CONTAIN AN EXCEPTION TO THE LAW

Leges quae . . . exceptionem a lege continent, strictae subsunt interpretationi.

In order to understand properly the third part of canon 19, it is necessary to recall the various ways in which a law can be found in the Code. A common law (*ius commune*) is enacted for all the members of the Church. A law enacted for all members of a certain and definite class, such as clerics, can be called a special law (*ius speciale*). There is really no difference in the theoretical extension of these laws. Numerically the common law embraces more than the special law but both laws include all within their proper ambit.

On the other hand, two kinds of law serve entire different purposes. The first is called *ius singulare*. This kind of law deviates from the common law but it is rather an integration of the common law rather than an exception to it. Privileges granted in the Code, such as privileges of clerics, are examples of this type of law. The second kind of law is actually an exception to the law and in no sense its integration. This kind of law is called *iuris singularitas*. The right of Cardinals to opt is an example of such a law.⁷⁹

The terminology adopted here is not universal. Canonists use different terms to fit the above concepts. For instance, Van Hove quotes Hilling as using the term "privileges" to indicate *ius singulare* and the term "*ius anormale*" to indicate *iuris singularitas*.⁸⁰ These divergencies of terms, however, should not create difficulties if the actual concepts are kept in mind. It is unfortunate that exact equivalents in the vernacular cannot be found.

Commentators on this part of canon 19 do not agree on the laws which would fall within its scope. Again Vermeersch and Michiels disagree. Van Hove has another opinion which differs from the view of both Vermeersch and Michiels. These

⁷⁹ Cf. Van Hove, *o.c.*, pp. 314-315; Michiels, *o.c.*, vol. I, pp. 448-450; Cicognani, *o.c.*, p. 617; Ojetti, *o.c.*, vol. I, p. 149; Cocchi, *o.c.*, vol. I, pp. 199-200.

⁸⁰ *O.c.*, p. 315, footnote 1.

opinions must be considered before exposition of canon 19 can be attempted.

Vermeersch ⁸¹ maintains that an exception to the law means that a particular law mitigates a prior law. No such disposition can be found in the Code according to Vermeersch because the entire Code was promulgated as one without any priority of one canon over another. Exceptions found in the Code are merely ways in which the law is found. Vermeersch admits, however, that if separate canons be considered, exceptions can be found to a law stated in another canon. But this would not be a proper use of the phrase "exception in a law."

Vermeersch does not deny that some laws must have strict interpretation. But such interpretation in the matter at hand would not fall under canon 19 for this canon would be a norm for particular laws promulgated after the Code establishing an exception to the law of the Code.

Michiels ⁸² holds the opinion that some laws contained in the Code are true exceptions to the law. This opinion rests upon the comparison between a general law which establishes a norm of action and another law which indicates an exception to this norm. According to Michiels, these laws are formally different although they refer to the same matter. Hence canon 19 can be applied whenever a different norm is established than is usually found. If this contention is true many examples can be discovered in the Code.⁸³

Laws, however, which refer to an entire group or class of persons are not exceptions to the general law. Michiels mentions laws in reference to clerics, religious and minors. These laws constitute an integration of the common law and are in no way to be interpreted strictly. In this category would fall the law of exemption of regulars.⁸⁴

⁸¹ *O.c.*, tom. I, p. 118-119.

⁸² *O.c.*, vol. I, p. 449.

⁸³ Michiels mentions e.g., cc. 101, § 1; 161; 168; 292, § 1; cf. *o.c.*, vol. I, p. 450.

⁸⁴ Cf. c. 615.

Van Hove⁸⁵ differs from Michiels in his denial that all exceptions found in the law are actually to be interpreted strictly. In this opinion, many exceptions are merely a greater specification of the general law. Moreover, whenever the Code acknowledges the validity of a particular law as changing the law of the Code, this acknowledgment is actually common law and is not to be considered an exception to such law.

The norm which Van Hove offers to determine whether or not an exception exists in the law is the reduction of this disposition of law to a dispensation. It is not the actual dispensation which is considered here as the exception to the law but the faculty or power granted in the law to concede a dispensation. The example used by Van Hove is canon 822, §4. In this canon power is granted to the local Ordinary to permit the Sacrifice of the Mass to be celebrated in homes.⁸⁶ This disposition of canon 822, §4, constitutes an exception to the law of canon 822, §1⁸⁷ and is therefore to be interpreted strictly.⁸⁸

It seems to the writer that none of the three opinions outlined can be entirely accepted. Michiels seems to be closest to the genuine meaning of canon 19, but some of the examples he offers do not support his opinion.

There is little doubt that Vermeersch's opinion that the use of canon 19 in the matter at hand is impossible because *The Code of Canon Law* was promulgated as one law must be rejected. No one denies that all the canons of the Code are equal in point of time. From this, however, it does not follow

⁸⁵ *O.c.*, pp. 315-316. Beste, *o.c.*, p. 83, seems to agree with the opinion of Van Hove.

⁸⁶ *Loci Ordinarius . . . licentiam celebrandi extra ecclesiam . . . concedere potest*, etc.

⁸⁷ *Missa celebranda est super altare consecratum et in ecclesia vel oratorio etc.*

⁸⁸ The response of the Holy See, October 16, 1919 has made canon 822, §4 a clear-cut example of strict interpretation. Cf. Bouscaren, *The Canon Law Digest*, (Milwaukee, 1943), vol. I, pp. 384-390.

that each canon or group of canons loses its separate identity. Certainly the law on the Sacraments and the law on the administration of property have separate identities although promulgated together. Hence, the lack of priority of time does not affect the application of canon 19.

Vermeersch is correct, however, in maintaining that canon 19 can be applied to future particular legislation which might disagree with the law as it exists today.

Michiels's general explanation of the third part of canon 19 can be accepted. He correctly opposes Vermeersch's opinion in establishing the separate identities of the canons or of a group of canons. This is an important point for without it the whole explanation of Michiels would cease to satisfy.

Michiels, however, does not correctly apply his own ideas in all the examples he selects. For instance, he suggests canon 161 as an example of an exception to the law⁸⁹ to be interpreted strictly. This is scarcely, as Van Hove observes,⁹⁰ a proper example for the Code places on an equal basis the general and the particular law regarding the time for elections. An indication is given which law is preferred but no actual exception to the law is established. In other words, canon 161 does not set up a common norm to be followed with the exception noted in the law but rather indicates the preference for a particular law.

Van Hove apparently restricts his application of canon 19 in the matter at hand to instances where an exception can be reduced to a dispensation. This is too narrow a view of canon 19. It is true that the canons which contain powers to dispense are in some cases to be strictly interpreted as in canon 822, §4 but the scope of canon 19 is wider than this. All exceptions in law are not dispensations except in the widest sense of the term.

⁸⁹ . . . electio, nisi aliud iure cautum fuerit, nunquam differatur ultra trimestre utile etc.

⁹⁰ *O.c.*, p. 317, footnote 3.

Van Hove, however, correctly estimates the integrating force of *ius singulare*. Hence, laws although deviating from the common norm, if they favor religion or public utility, are not to be strictly interpreted.⁹¹

With the exposition of the opinions of Vermeersch, Michiels and Van Hove completed, it will be useful to see what is agreed upon and what can be established as helpful in the interpretation of this part of canon 19.

1) The basis for third part of canon 19 is specified further in its reliance on the concept found in Rule 28 of the Rules of Law of Pope Boniface VIII.⁹² The entire idea, however, of this rule is not necessary for the interpretation of canon 19.⁹³ All that is necessary here is to understand that deviation from the general law is odious or unfavorable.⁹⁴ But this is true only if no greater good, or if no greater general purpose is not served by the exception to the law. Thus, in the opinion offered by Van Hove, all the exceptions which can be reduced to dispensations must be interpreted strictly for their purpose does not outweigh the general purpose of the law.

2) Exceptions which are found in laws but which are really integrations of such laws are not to be interpreted strictly. Obvious integration of law can be found in the necessary domicile of wives and minors.⁹⁵ The privilege of forum,⁹⁶ the privilege of exemption,^{96a} the privilege of minors⁹⁷ and similar

⁹¹ *O.c.*, p. 315. Cf. footnote 2 where this opinion is said to be commonly accepted by moralists and canonists.

⁹² R. J. 28, in VI°. *Quae a iure communi exorbitant, nequaquam ad consequentiam sunt trahenda.*

⁹³ Rule 28, however, is aptly cited in its entirety under canon 67 for the interpretation of privileges.

⁹⁴ Cf. Michiels, *o.c.*, vol. I, p. 448; cf. also Reiffenstuel, *o.c.*, ad Reg. XXVIII, n. 2, 4-5.

⁹⁵ Cf. c. 93, § 1.

⁹⁶ C. 120, § 1.

^{96a} C. 615.

⁹⁷ C. 1687, § 1.

privileges found in the Code are not to be strictly interpreted and therefore do not fall under the provision of canon 19. Michiels says these rights can be called parallel laws.⁹⁸ This is true of some privileges such as the privilege of forum and the privilege of exemption but all these exceptions will not be parallel legislation. Moreover, some privileges are introduced for the good of religion and others for public utility.⁹⁹ This doctrine agrees with commentaries on Rules 15 and 28 of the Rules of Law.¹⁰⁰

3) Another idea of Michiels can be considered here. He maintains that whenever the law itself is a restriction of rights, an exception to the law must not be interpreted strictly.¹⁰¹ The basis of this opinion is that natural freedom emerges whenever restrictive obligations cease. The example offered by Michiels is canon 139, §3 where the exercise of the professions of procurator and lawyer is limited. This opinion can be accepted and applied also to other canons in the Code where restrictions on rights are established.¹⁰² It must, however, be remembered that some confusion may arise here due to the overlapping parts of canon 19. In this particular consideration, three separate ideas are found, the freedom conceded, the restrictive law and finally the restoration of freedom under certain circumstances.

4) The importance of properly understanding a clause introduced by the term "nisi" must be stressed.¹⁰³ This term is not used exclusively in regard to exceptions in law. In point of fact its use indicating conditions which must be fulfilled before the law operates is more extensive than its use

⁹⁸ *O.c.*, vol. I, p. 450. Cf. also Coronata, *o.c.*, vol. I, p. 27.

⁹⁹ Cf. Cicognani, *o.c.*, pp. 617-618; Ojetti, *o.c.*, p. 149.

¹⁰⁰ Cf., e.g., Reiffenstuel, *o.c.*, ad Reg. XV, n. 20-21; ad Reg. XXVIII, n. 12.

¹⁰¹ *O.c.*, vol. I, p. 451.

¹⁰² E.g., freedom to confess in canon 905, restricted in canon 520, § 1; exception in canon 522.

¹⁰³ The term "nisi" used in law to describe status is not considered here. Cf. e.g., cc. 223, § 3; 282, § 3; 940, § 1.

indicating an exception in the law. Besides this, there are a number of canons where integration of law and not exception are indicated by this term. Only an example or two will be mentioned here as revealing this divergency of use. Further indications can be found in footnotes.

a) Integration of law is indicated by a *nisi* clause in canon 101, §1, 1°. There an existing legal enactment other than the law stated in the canon must be followed instead of the canon itself. This is not an exception to the law since preference is given to this separate enactment. This preference eliminates strict interpretation of canon 101, §1, 1°. ¹⁰⁴ The matter at hand is the determination of the acts of a collegiate moral person. Another example of integration instead of exception in the law is found in canon 171, §1 where separate legitimate statutes are to be followed rather than the text of the canon. This canon considers the manner of election. ¹⁰⁵ In addition to these examples, generally speaking, the phrase "*ex rerum natura*" in the *nisi* clause will not indicate an exception in the law. The same can be said for canons which state that the context will determine the extent of the law. ¹⁰⁶

b) The *nisi* clause frequently indicates conditions to be fulfilled rather than an exception in the law. However, it is sometimes difficult to see exactly where this classification is clearly and definitely set apart from an exception in the law. The examples offered here are clear and definite examples of conditions in the *nisi* clause.

Canon 169 states the conditions for a valid vote. Unless the vote is free, secret, certain, absolute and determined, the vote is null and void. ¹⁰⁷ Canon 623 states that Superiors may

¹⁰⁴ *Nisi aliud expresse iure communi aut particulari statutum fuerit, id vim iuris habet etc.*

¹⁰⁵ . . . *nisi iam propriis statutis deputati sint.*

¹⁰⁶ Other examples of integration of law with the *nisi* clause can be found e.g., in cc. 153, § 1, § 3; 161; 168; 172, § 1; 179, § 1; 194, § 1; 201, § 3 (*ex rerum natura*); 202, § 3; 368, § 2; 950 (*ex natura rei, vel ex contextu verborum*); 2145, § 1.

¹⁰⁷ § 1. *Suffragium est nullum, nisi fuerit etc.*

send only mature persons to collect alms.¹⁰⁸ Many other examples could be mentioned although all of them would not be as clear and definite as the two offered.¹⁰⁹

c) The *nisi* clause also indicates an exception in law. One example can be found in the law governing the loss of office. In canon 183, §2 it is stated that one's own office is not affected by the loss of the Superior's office unless the law rules otherwise.¹¹⁰ Another example can be found in canon 930 where it is mentioned that all indulgences conceded by the Roman Pontiff are applicable to the souls in Purgatory unless otherwise stated.¹¹¹ Other examples can be easily adduced.¹¹²

5) A word must be said also in regard to the possible use of the ablative absolute as an indication of an exception in law. Just as the consideration of the *nisi* clause revealed different uses of this clause, so, too, the ablative absolute is discovered as used in different ways. Several examples will be offered to illustrate this statement.

a) The ablative absolute does not indicate an exception in law for instance in canon 130, §1 where the law regarding clerical examinations is stated.¹¹³ Nor is an exception in law found in canon 394, §3 where revenue for Chapters is determined.¹¹⁴ Other examples could be mentioned.¹¹⁵

¹⁰⁸ Non licet Superioribus stipem colligendam committere, nisi professis aetate animoque maturis.

¹⁰⁹ Cf. e.g., cc. 177, § 1; 179, § 2; 181, § 2; 192, § 2; 203, § 2; 204, § 2; 205, § 2; 289; 495, § 1; 520, § 1; 754, § 1; 762, § 1; 766, 4°; 953; 986; 1263, § 2; 1427, § 3; 1828; 1903; 1970; 1972; 2002; 2019; 2147, § 2, 3°.

¹¹⁰ Resoluto quovis modo iure Superioris a quo fuerat concessum, officium ecclesiasticum non amittitur, nisi lex aliud caveat etc.

¹¹¹ . . . animabus autem in purgatorio detentis indulgentiae omnes a Romano Pontifice concessae, nisi aliud constet, applicabiles sunt.

¹¹² Cf. e.g. cc. 184; 199, § 2, § 5; 201, § 3; 205, § 3; 210; 294, § 1; 499, § 2; 766, 1°; 782, § 2; 806, § 1; 2163, § 1; 2188.

¹¹³ Expleto studiorum curriculo, sacerdotes omnes . . . examen . . . subeant etc.

¹¹⁴ . . . audito Capitulo et impetrata Sanctae Sedis licentia.

¹¹⁵ E.g., cc. 137; 144; 182, § 1; 183, § 2; 190, § 1; 369, § 2.

b) An exception in law is indicated by the ablative absolute, for example, in canons 156, § 3 and 188, 1°. The former canon considers incompatible offices¹¹⁶ while the latter deals with tacit renunciation of office.¹¹⁷ Other examples could also be mentioned.¹¹⁸

It should, however, be noted that every use of the terms "firmo praescripto" or "salvo praescripto" is not an indication of an exception in law. Sometimes these terms are used for the integration of law.¹¹⁹

6) An exception to the law is found not only in the text of the separate canons but also in groups of canons which constitute the context of law.¹²⁰ This statement is based on the contention that the separate laws of the Code must be considered in their entirety even if these laws require several canons to state completely their application. This agrees entirely with the law of canon 18 which demands that the context in which the law is found must be considered in its interpretation.¹²¹ There are some indications in the Code where a group of canons are clearly and completely set off as comprising one law. These indications are not too numerous.¹²²

In the matter at hand, an attempt will be made for the sake of demonstration only to unite in one group two or more canons which can be said to form one law part of which will contain the normal obligation and part will constitute an exception in the law. Discussion of these groups will sometimes overlap the exposition offered concerning the interpretation

¹¹⁶ Firmo praescripto etc.

¹¹⁷ . . . salvo praescripto etc.

¹¹⁸ E.g., cc. 201, § 2; 368, § 1; 500, § 1; 820.

¹¹⁹ E.g., cc. 369, § 2; 403; 534, § 1; 809.

¹²⁰ Cf. *Blat. o.c.*, vol. I, p. 102.

¹²¹ *Leges ecclesiasticae intelligendae sunt secundum propriam verborum significationem in textu et contextu consideratam.*

¹²² E.g., cc. 908-910; 1104-1107; 1406-1408; 1925-1928.

of laws restricting the free exercise of rights.¹²³ This, however, will be avoided whenever possible.

a) The law of Papal cloister is stated in canons 597, 598, §1 and in the introductory part of canon 600. The exceptions to this law are found in canon 598, §2 in regard to Papal cloister of men ¹²⁴ and in canon 600, 1°-4° in regard to the Papal cloister of women.¹²⁵

b) The number of delicts and warnings required before a religious in lay and in non-exempt clerical communities can be dismissed is determined in canon 649.¹²⁶ An exception to this law is stated in canon 653 where scandal and serious harm to the community are considered.¹²⁷

c) The confirmation of the Holy See of the act of dismissal in clerical exempt communities is required according to canon 666.¹²⁸ An exception to this law is found in canon 668.¹²⁹

d) Local Ordinaries possess the power to dispense in danger of death from the canonical form of marriage and from some impediments in canon 1043.¹³⁰ An exception to this law providing faculties for pastors and other specific priests is contained in canon 1044.¹³¹ This example, however, need not be

¹²³ E.g., cc. 538 and 542 could be discussed either in regard to restriction of rights or in regard to an exception in the law. Cf. Bouuaert-Simenon, *o.c.*, p. 102.

¹²⁴ Eximuntur ab hac lege uxores eorum qui supremum actu tenent populorum principatum, cum comitatu.

¹²⁵ 1°. Ordinarius loci . . . dumtaxat inspectionis causa, etc. 2°. Confessarius . . . ad ministranda Sacramenta etc. 3°. . . qui supremum actu . . . etc; itemque S.R.E. Cardinales. 4°. Antistitae est . . . ingressum permittere medicis, chirurgicis, etc.

¹²⁶ . . . praecedant necesse est tria delicta cum duplici monitione etc.

¹²⁷ . . . religiosus statim potest . . . ad saeculum remitti etc.

¹²⁸ Sententia executioni mandari nequit, nisi etc.

¹²⁹ . . . religiosus statim potest . . . ad saeculum remitti etc.

¹³⁰ Urgente mortis periculo, locorum Ordinarii, . . . possunt . . . dispensare etc.

¹³¹ . . . eadem dispensandi facultate pollet tum parochus, etc.

considered entirely as an exception to the law for the ambit of power is widened here rather than restricted.

e) The last example to be mentioned here is taken from the law on prescription. The law of the Church generally adopts the civil law of the nation or region where prescription is invoked.¹³² Exceptions to this law are enumerated in canon 1509. Among these items are boundaries of ecclesiastical provinces and the payment of the cathedraticum.¹³³ This example could well be also considered as an integration of law. It illustrates briefly the difficulty in setting apart examples which without any question must be accounted as exceptions in law and therefore strictly interpreted.

Consideration of canon 19 will close with a word concerning the presumption to be followed when it is not clear whether a law is to be strictly or broadly interpreted. This difficulty will not arise in penal law for all doubts in this matter are resolved in favor of strict interpretation.

Difficulties can arise, however, in the interpretation of laws which contain real or alleged restrictions on the free exercise of rights or contain at least apparent exceptions in the law. The difficulty of interpretation is especially persistent in the latter case.

Where certainty of interpretation cannot be had, authors both before and after the Code maintain that if a law is divisible the restrictive part must be interpreted strictly, the rest broadly. If division is impossible, the law is considered favorable and not to be interpreted strictly.¹³⁴

EDWARD ROELKER

THE CATHOLIC UNIVERSITY OF AMERICA

¹³² C. 1508. *Praescriptionem, . . . prout est in legislatione civili respectivae nationis, Ecclesia pro bonis ecclesiasticis recipit, etc.*

¹³³ 4°. *Fines certi et indubii provinciarum ecclesiasticarum, etc.* 8°. *Solutio cathedratici.*

¹³⁴ Cf. Zallinger, *o.c.*, lib. I. tit. II, § 200; Beste, *o.c.*, pp. 83-84; Bouuaert-Simenon, *o.c.*, p. 103; Van Hove, *o.c.*, p. 314.

SOME ASPECTS OF GOVERNMENT IN RELIGIOUS COMMUNITIES

THE fundamental principle of government in religious communities is formulated in canon 501, § 1, which reads: "Conformably to their Constitutions and to the prescriptions of common law, superiors and chapters have dominative power over their subjects; in exempt clerical communities they have likewise ecclesiastical jurisdiction, both for the internal and for the external forum."

This provision of canon law gives juridical expression and binding force to an essential requirement for every society: the power in the rulers of the society to guide and direct, even to oblige, the members of the society to center all their activities on the attainment of the end for which the society exists. Even without any such explicit provision of positive law, dominative power would exist by virtue of the natural law, for it arises "from the agreement which a religious makes when he enters the religious state, and in virtue of which he subjects himself to the dominative authority of those who will be appointed to direct him to the end of the religious institute."¹

In the days when the religious life was lived almost exclusively on a local basis, with monasteries or other groups of religious centered more or less in one place, intricate problems of community government were not encountered. But this strictly local character of the religious life soon began to disappear, particularly when various groups of monks, while answering the call of apostolic zeal to other regions, wished nevertheless to retain their juridical ties with the mother house from which they had come.

¹ Clancy, *The Local Religious Superior*, The Catholic University of America Canon Law Studies, n. 175 (Washington, D. C.: The Catholic University of America Press, 1943), p. 7.

This was the case especially at the time of the rise of the Mendicant Orders. In their organization the individual houses of the Order were not autonomous units, as in the ancient Benedictine tradition, but all were subjected to the authority of the superior known as the "General". Then, with a view to greater facilitation of government, particular territories were placed under the immediate jurisdiction of an intermediate superior, who was known as the "Provincial".² Thus was evolved the threefold level of authority which now prevails in the greater number of present-day religious communities: local superiors, provincials, and the Superior General.

With its customary prudence, the Code does not attempt to define with any degree of precision the exact limits of the authority belonging to each one of these three levels of authority. Canon 502 merely states: "The Superior General has over all the provinces, houses, and members of the institute authority to be exercised conformably to the Constitutions; other superiors have authority within the limits of their office." All further determination of this general principle is left to the Constitutions of particular institutes.

But not even particular Constitutions can provide practical norms for all possible concrete cases. The authority of major superiors over matters of discipline stands out with comparative clarity. The clarity, however, is not so impressive when we enter the field of the administration of temporalities by local houses and the respective provinces. Questions are also raised on the relationship between superiors and their respective councils, and between major superiors and the chapters which they must convoke periodically. Given the importance of these questions for the proper functioning of every religious community, efforts to shed light on their solution will perhaps not be time and effort wasted.

² O'Brien, *The Provincial Religious Superior*, The Catholic University of America Canon Law Studies, n. 258 (Washington, D. C.: The Catholic University of America Press, 1947), pp. 1-3.

I

GENERAL RELATIONSHIP OF THE THREE LEVELS
OF AUTHORITY

Between the restricted sphere of authority of the local superior and the community-wide authority of the Superior General there is a vast difference. This difference, however, is one of *degree*, not of *kind*. When canon 501, § 1, declares that "superiors" have either ecclesiastical jurisdiction or dominative power over their subjects, it makes no distinction between major and minor superiors. Hence they are all endowed with the same *kind* of authority, although the *scope* of each one's power will necessarily be different.

From this it follows that the local superior is not merely an agent, or delegate, of his major superior. The authority of local superiors does not devolve upon them by virtue of delegation from higher superiors. It is conferred upon them *by law*, within the limits determined by their own Constitutions. The major superiors, according to methods obtaining in different communities, designate the religious who is to hold the authority. But they do not confer that authority when they make the appointment to the superiorship.

Thus, by the simple fact of valid appointment or election, a local superior is vested with all the authority necessary for the proper discharge of his duties according to his Constitutions. Since the power attached to his office comes from law, it is proper power (dominative or jurisdictional), not merely vicarious. In other words, the superior thus invested with authority acts in his own name, not merely as the mouthpiece, or vicar, of his major superior.

Although some Constitutions state that local superiors are "under the immediate jurisdiction of the provincial", this provision does not contradict the general principle of law on the relative autonomy of the local superior. It means only that the one to whom the local superior is directly and immediately responsible is the provincial, not the Superior

General, and that all matters requiring adjudication are to be submitted first of all to the provincial.

These basic principles, however, are not to be interpreted as implying that no subordination at all exists between the local superior and his major superiors. Although enjoying by law a certain degree of relative autonomy, local superiors are not thereby rendered independent. They are members of a higher society than the individual house over which they are placed, and must, consequently, render an account of their administration to those superiors whose duty it is to coordinate the activities of the different houses for the welfare of the province, or to direct those of the various provinces towards the spiritual and temporal prosperity of the entire institute.

It is true that no major superior may substitute himself for the local superior or the local council of a particular house. Neither may he habitually and at will usurp the faculties granted to local superiors by the Constitutions. Nevertheless, the local administration remains subject to the government, vigilance, correction, and general control of higher superiors.³

The provincials and the Superior General hold their respective offices precisely in order to assure that more general promotion of community welfare which the interest of the local superior in his own house can easily tend to make him forget. This necessary power of supervision and general direction permits higher superiors to step into local administrations only when such action is authorized by the Constitutions, or demanded by the continuance of abuses or other irregularities which the local superior is unwilling or unable to eradicate.

Judgment as to the opportuneness of such intervention is necessarily left to the major superior himself—his power would be useless were it to depend on the interested local superior to decide when it could be invoked. But it is certainly contrary to the mind of the Church for major superiors

³ *Commentarium pro Religiosis et Missionariis*, XXII (1941), 24.

to retain for themselves a decisive hand in all, or even any, details of local administration.

In order to provide major superiors with the leisure and the opportunity for more perfect over-all supervision of their provinces or their local houses, canon 516, § 3, forbids them to take over, except in unusual circumstances, and even then only provisorily, the office of steward or treasurer of their respective administrations. With still greater reason, should they refrain from taking for themselves authority over the multitudinous details involved in the administration of the various provinces or houses subject to them.

Hence, religious are to be trained not to have recourse to higher superiors for matters falling within the competence of their immediate superior, local or provincial.⁴ The converse of this principle would demand that higher superiors, in turn, should respect the authority of their lower superiors, and should not interfere in their respective administrations, except in the cases and in the degree permitted by their Constitutions. Their right of vigilance confers no right of arbitrary interference.

II

THE ADMINISTRATION OF TEMPORALITIES

According to canon 1499 the ownership of ecclesiastical and religious property is vested in the juristic person which has legitimately acquired it. For religious communities this juristic person, in the terms of canon 531, will be either the institution as a whole, one or other of its provinces, or individual houses. Consequently, unless the Constitutions restrict or exclude the aforesaid right, any religious community, or any province or house thereof, may, by virtue of canon 531, acquire and possess temporalities.

Essentially connected with this right of ownership is the right of administration. That is why canon 532, § 2, mentions

⁴ Creusen-Garesché-Ellis, *Religious Men and Women in the Code* (Milwaukee: Bruce Publishing Co., 1940), n. 63, p. 45.

that the administration of property pertains likewise to the moral person which acquired it.

Since these different units of a religious community—institute, province, house—are governed by their respective superiors, it is in these superiors that the rights of temporal administration are directly vested. These rights of administration are conferred upon them by canon 501 as part of the general authority necessary for the proper exercise of their office.

In the use of this authority, each superior must remain within his own sphere. No superior, even though he be a major superior, may lawfully interfere with the temporal administration of any other superior, except in cases stipulated in law or in the Constitutions of the institute. Hence, only the Superior General may dispose of the goods of the entire community; only the provincial has authority over the temporalities of the province; only the local superior can dispose of the goods of his house.

From this it follows that neither the Superior General with regard to the goods of the provinces or the local houses, nor the provincial with regard to the goods of the individual houses of his province may, without the free consent of the interested parties, dispose of such property without incurring the guilt of grave injustice.⁵

Consequently, no higher superior may regard the assets of a subordinate house or province, no matter how flourishing its financial condition, as a source of supply to be drawn on at will. Aside from the Sovereign Pontiff who, according to canon 1518, is the supreme administrator of all ecclesiastical and religious property throughout the entire Church, no superior in the Church has any prerogative of eminent domain

⁵ Vromant, *De Bonis Ecclesiae Temporalibus* (Louvain: Museum Lessianum, 1927), n. 229, p. 244; Vermeersch-Creusen, *Epitome Iuris Canonici*, II (2. ed., Mechliniae-Romae: H. Dessain, 1925), n. 818; Wernz-Vidal, *Ius Canonicum ad Codicis Normam Exactum*, Tom. III, *De Religiosis* (Romae: apud Aedes Universitatis Gregorianae, 1933), p. 169, note 2.

over property which he administers himself or of which he supervises the administration.

The picture, however, is not entirely one-sided. If higher superiors may not regard the property of subordinate administrations as their own, neither do these subordinate administrations enjoy unlimited autonomy. They must not forget that they belong to a wider organization than their own local or provincial unit, and that this fact entails a serious obligation to help in providing for the needs of this higher organization and administration.

For this reason, the jurisprudence of the S. Congregation of Religious provides for the payment of determined contributions by the individual houses to their respective provinces, and by the provinces to the General Administration of the institute. The *Normae* of the S. Congregation provided formerly that each house was to remit annually to the provincial one-third of its net surplus, while each province was to turn over a corresponding one-third of its net surplus to the General Administration. Individual communities are free to provide for themselves whatever manner or percentage of contribution may be deemed more practical for their own particular situation. In some instances, the amount and the method of payment are determined by the Constitutions. At the present time, given the uncertainties of income and expenses and, for international institutes, the fluctuations and restrictions in money exchange, the mind of the S. Congregation seems to be that this determination should be left to successive General Chapters,⁶ in order that proper provision may be the more easily made periodically for the contingencies mentioned above.

Because of their subordinate role in the administration of their institute, individual houses and provinces may, in some exceptional circumstances, be obliged to postpone or even to forego some projected development in order to assist higher

⁶Bastien, *Directoire Canonique à L'usage des Congrégations à Voeux Simples*, p. 230.

superiors in their needs. This does not mean, however, that major superiors would be justified in requiring the houses or the provinces under them to remit their entire annual net surplus. Such a provision against the accumulation of reserve funds would run counter to the actual practise of the Holy See and would violate the relative autonomy of local houses and provinces in their administrative rights. It might even endanger their financial security by making them share thus in the precarious financial situation of a higher administration.

Such procedure would also be against the best interests of the province or the institute in general. Barring some unusual cases, religious, without being blind to the general development of their province or of the community at large, are quite naturally interested in the expansion and development of the field of activity to which they are assigned by obedience. Their interest would be diminished, were they to see the fruits of their efforts removed in their entirety for some other phase of community activity, no matter how deserving it might be in itself.⁷ Thus prudent superiors will leave at the disposal of every house or province the means which are normally required for their reasonable maintenance and development.

According to the *Normae* of the S. Congregation of Religious, the contribution of the lower administration is to be taken from the surplus *deductis omnibus expensis*. These expenses are generally understood as including, over and above operating expenses, the payment of interest on debts, as also the regular installments towards amortization.

There would seem to be no valid reason for excluding from these expenses an equitable percentage for depreciation on buildings and equipment. The amount fixed for such depreciation is gradually laid aside against the day when repairs, or even the replacement of buildings and equipment, will eventu-

⁷ Schaefer, *De Religiosis ad Normam Codicis Iuris Canonici* (4. ed., Romae: Typis Polyglottis Vaticanis, 1947), p. 372; Creusen-Garesché-Ellis, *op. cit.*, n. 159, p. 118.

ally be necessary. Thus this annual deduction for depreciation is really a kind of insurance, which will obviate the necessity of paying all eventual repairs or replacements out of the income of one year. In this way, the recognition of depreciation as a legitimate expense benefits both the subordinate and the higher administrations.

It should be borne in mind that the annual surplus is to be calculated on the basis of the balance of income over expenses, as accruing from ordinary operations. This point is of very great importance nowadays, when religious institutions are, of necessity, expending so much time and effort to interest prospective benefactors with a view to endowment. Benefactors usually give their money to some phase of the institution's activity in which they have special personal interest. This being the case, and in view of the scrupulous care with which canon 1514 demands that the intentions of benefactors be honored, higher superiors may not require such benefactions to be included in the "income" of a house or province. Unless the contrary be explicitly stated, the will of the donor is to benefit a specific aspect of the institution's activity in the house or the province which he favors, and it would derogate from his intention to draw off part of his donation, even for the benefit of the province or the community to which the house or province belongs.

Without prejudice to the basic right of major superiors to exact support from their provinces or houses, a question may be raised as to the specific manner in which support is to be provided. Because of modern circumstances and the consequent necessity of following strict business methods in religious administrations, religious provinces or houses will most probably find it difficult to justify their necessary support of higher administrations as outright contributions. Prospective benefactors, especially those who may intend to provide considerable sums for endowment, will usually demand to see the accounts of the institution or the province, in order to assure

themselves that their donations will be in the hands of administrators capable of handling them wisely. In the light of their strict business approach, they do not see clearly how what they term an "outside agency" can step in and draw off from the institution or province a determined annual sum. It is a matter of simple fact that this preoccupation on the part of some well-disposed individuals has motivated them in deviating to non-Catholic institutions substantial donations which they were at first inclined to make available to Catholic organizations.

Another difficulty arises from the tendency of present-day legislation to circumscribe the financial activities of tax-exempt institutions. More and more, such legislation is requiring that, to safeguard its tax-exempt status, an institution must turn back into its own administration all profits accruing from its activities. If tax appraisers examine the accounts of an institution and find that it is annually remitting considerable sums to an "outside agency", they will conclude to a violation of the law, and proceed to subject the institution to taxation as a profit-making organization.

Hence religious administrators today may find it necessary to assign some other term rather than "contribution" for the sums they must remit to the province or to the institute. The most practical means of safeguarding itself, while at the same time assuming the fulfillment of its duty as a subordinate unit in a higher organization, is to record this contribution in the accounts in terms of salaries—thus giving a concrete money value to what have been traditionally regarded as "donated services" by the religious to their institutions.

In determining the value of such services, the importance of the positions held by the various religious should be taken into account. No objection can be raised if the president, or other officials, of a Catholic college or university, for instance, are listed as receiving salaries equivalent to those paid to corresponding officials in other schools, or if the Directress, the

Superintendent of Nurses, and similar officers in a Catholic hospital are assigned the remuneration allowed to officers of equivalent rank in civic or non-sectarian institutions. Such procedure would duly safeguard the subordination of inferior administrations to their higher superiors, while at the same time it would not jeopardize their privileged status as tax-exempt institutions before the civil law.

Over and above the usual contributions of which we have just treated, all authors, following the jurisprudence of the S. Congregation of Religious, agree that, with the consent of his council, the Superior General or the provincial may exact of their respective provinces or houses an extraordinary contribution, in keeping with their means, to meet some particular emergency. Here again, the question of the *manner* of procedure is open for consideration. Without questioning the right of the major superior to levy such extraordinary assessments as a special tax pure and simple, we may wonder if, in the light of preceding considerations and as a matter of prudence, the major superior might not better provide for such contingencies by a loan at legal interest rates from one of the provinces or houses. Thus, from the business point of view, the money thus provided by the subordinate administrations becomes an investment which can stand the scrutiny of any prospective benefactor or tax appraiser.

What has already been said regarding the necessity of safeguarding religious administrators against new legal requirements, and of putting their accounts in line with accepted business methods, would appear to indicate that in such circumstances, a loan at moderate interest would be more advisable. There is the added consideration that such procedure would act as a kind of restraint on higher superiors, who would hesitate before making a loan to meet some need, whereas they might act with less hesitancy if it were merely a question of levying a special tax.

III

SUPERIORS AND CHAPTERS

Canon 501 makes it clear that chapters, which provide for extraordinary government in religious communities, are endowed with whatever kind of power is conferred by their respective Constitutions on the superiors of the institute. In fact, as is clearly pointed out by Lewis, chapters are in reality collegiate superiors.⁸ Since canon 501 makes no distinction in its use of the general term "capitula", this conclusion is applicable to all chapters.⁹

The specific nature of the authority of chapters is determined by the nature of the institute which they represent. Chapters in exempt clerical institutes enjoy veritable ecclesiastical jurisdiction, whereas chapters in non-exempt institutes are endowed with only dominative power. Nevertheless this technical distinction in the nature of their authority does not detract in any way from the binding power of chapters in non-exempt institutes. Though unable to make laws strictly so-called, these latter are fully empowered to enact regulations binding on all those subject to their authority and, consequently, are entitled to full and perfect obedience from all subjects of the chapter.¹⁰

No matter what the nature of the chapter, all matters submitted to it are determined by the majority vote of the capitulants.¹¹ Although the major superior presides by right over the chapter, nevertheless his vote is no more decisive than that of any other capitulant, except in case of a tie vote, as provided for in canon 101, § 1, 1°.

⁸ Lewis, *Chapters in Religious Institutions*, The Catholic University of America Canon Law Studies, n. 181 (Washington, D. C.: The Catholic University of America Press, 1943), p. 54.

⁹ Schaefer, *op. cit.*, n. 453, p. 208.

¹⁰ Lewis, *op. cit.*, p. 59.

¹¹ Bastien, *op. cit.*, n. 287, p. 195.

Chapters have greater authority than the superiors who preside over them.¹² Hence, as Vromant states, a chapter can take up and discuss matters, even against the will of the presiding officer and may proceed to decisions, even though these decisions be not acceptable to the president of the chapter.¹³ Schaefer points out that a general chapter, for instance, exercises full and supreme power in the institute for the time that it is in session.¹⁴

From these considerations it follows that capitular decrees are much more than mere recommendations of the chapter to the interested major superior. The chapter as such is a collegiate body distinct from, and superior to, the presiding officer. In consequence, the major superior presiding over a chapter is bound to see to the prompt and faithful execution of its decrees, thus giving good example by being the first to give obedience to them. Noldin formulates this principle very clearly when he says: "The members of an assembly endowed with legislative power are all bound by the laws which such assemblies pass, for, as individuals, they are all subject to the assembly, which alone has legislative power. Therefore, the president of a nation is bound by the laws of the nation, a metropolitan is held by the laws of the provincial synod, and a religious prelate by the laws of a general chapter."¹⁵

IV

SUPERIORS AND THEIR COUNCILS

Canon 516, § 1, makes the erection of councils mandatory: "The Superior General of a religious community or a monastic congregation, the provincial superior, and the local superior of at least formed houses shall have their councillors,

¹² Lewis, *loc. cit.*

¹³ *Op. cit.*, n. 42, p. 56.

¹⁴ *Op. cit.*, n. 452, p. 207.

¹⁵ *Summa Theologiae Moralis*, I, *De Principiis*, (29. ed., 1944), n. 149 (1), p. 154. This principle is applicable, *mutatis mutandis*, also to non-exempt communities, even though their chapters have no strict legislative power.

whose consent or advice they shall ask, conformably to the Constitutions and the sacred canons."

This canon makes it clear that the superior and his council are two distinct entities: "The *superior* . . . shall have *his councillors* . . ." This observation is of the utmost importance, because serious difficulties can arise when, in general, provincial, or local administrations, it is forgotten that all authority resides in the respective superior, or when superior and councillors are, so to speak, fused into one governing body, as though authority in the institute, the province, or the house were to be exercised by some kind of "little parliament". In the mind of the Code and of the constant practise of the Church, there is nothing which confers on councils parliamentary powers, or gives them authority to make decisions, as though they were the governing authority on their particular level of administration. It is in this element that a council differs essentially from a chapter.

The vote of the council is often a *conditio sine qua non* before the superior can act, *if he wishes to act*. The vote of the council cannot oblige him to act. The council has no power of government.¹⁶

The positive function of the council is to provide assistance for the superior in the exercise of his authority. While the superior remains the one sole subject of authority, there are times when he must ask the advice of his council, even though he is not obliged to follow it; there are other times when he cannot act validly without the consent of his council.¹⁷ In

¹⁶ Goyeneche, "Consultationes"—*Commentarium pro Religiosis*, XI (1930), 350; Pirhing, *Jus Canonikum in V Libros Decretalium*, III, 9, n. 3; De Herdt, *Praxis Capitularis*, p. 430, IV; Vermeersch, "De Consiliariis Superiorum"—*Periodica de Re Canonica et Morali utili praesertim Religiosis et Missionariis*, XV (1926), pp. (61)-(63).

¹⁷ Given the obscurity of canon 105, 1°, and the absence of any authentic declaration from the Holy See, it cannot be stated with certainty that a superior acts invalidly when he neglects to ask the advice of his council in those cases in which nothing more than consultation is demanded by the Code—Schaefer, *op. cit.*, n. 581, p. 296.

certain cases, the council can prevent the superior from acting by withholding its consent. But not even its unanimous vote can force the superior to act accordingly, if he has reasons for not acting. So whether he acts after taking the advice of his council, or after receiving their consent, the superior always acts *with his own authority*. He is not merely the executor of the will of the council. His act is the act of the superior, not the act of the council.

Barring a specific provision of the Constitutions to the contrary, the councillors may not, as a general rule, bring up matters for discussion, nor, much less, in the light of the preceding considerations, call for a vote on a proposed measure. Nothing prevents them from presenting, with the proper spirit of respect and submission, certain points which they would like to have discussed in council, provided the superior is left free to accept or to reject such suggestions. The superior must always remain sole judge in such circumstances of both the opportuneness of bringing up such matters and, if he agree to a discussion of them, of the degree in which the topics can be discussed.

Demonstration of these principles by examples drawn from the Code is not difficult. Canon 534, § 1, for example, says that the competent authority in certain cases of alienation of property is *the superior*, with the consent of his chapter or council. According to canon 543, the right to admit candidates to the novitiate and to religious profession pertains to the *major superiors*, with the vote of their council or chapter, conformably to their respective Constitutions. This same principle is enunciated in canon 572, when it lists the conditions to be verified for valid religious profession. Thus we may lay down the principle that the sole subject of authority for the government of a house, province, or institute, is the respective superior who, however, finds in his councillors assistance and a certain degree of control in the exercise of his authority.¹⁸

¹⁸ Goyeneche, *Commentarium pro Religiosis et Missionariis*, XXII (1941), 199 ff.

In the entire Code there is only one instance in which the law of the Church confers strictly decisive power on the council. This is for the dismissal of a perpetually professed religious in non-exempt clerical and in lay institutes. Canon 650, § 2, provides that when the case has been heard, the council votes and, if the majority favors dismissal, then the Superior General must draw up the decree of dismissal and submit it to the Holy See for ratification. In this case, however, the council really replaces the collegiate tribunal of judges which would be established in institutes having ecclesiastical jurisdiction, and in such collegiate deliberations the decision is always by majority vote.

This insistence on the preponderant role of the superior in his relations with his council should not be misunderstood as belittling the importance of the council. Very wisely does the Church oblige superiors to consult their councils, and canon law even goes so far in some cases as to prevent the superior from acting validly without the consent of his council. Such canonical prescriptions are based on fundamental human prudence, since no one individual, however great his personal talents and experience may be, can expect to be endowed with such clarity of vision as to be able to envisage and properly appreciate, especially in large administrations, all the aspects of a given problem. Hence one experienced author writes that for a superior to attempt to decide everything without consulting his council is dangerous presumption.¹⁹ And Vromant declares that although it is only an ecclesiastical law which invites superiors to accede to the unanimous opinion of their councillors, nevertheless a superior could easily be guilty of imprudence against the natural law by making light of such an expression of opinion on the part of his officially constituted consultants.²⁰

¹⁹ Valuy, *Le Gouvernement des Communautés Religieuses*, pp. 161-175.

²⁰ *Op. cit.*, p. 54, 3).

On the other hand, as Fr. Valuy, S.J., points out, the opposite extreme is equally reprehensible. If it is dangerous presumption for a superior to attempt to decide all things without consultation with his council, it is by the same token a cowardly renunciation of authority for him to throw all responsibility for his decisions back on his council.²¹ A weak-willed superior will oftentimes endeavor to hide behind his council, in the hope of thus escaping responsibility for his decisions, particularly if they are not relished by certain of his subjects. Such an attitude cannot be easily hidden from the superior's subjects, and before long it will constitute a genuine threat to his authority and prestige. Orders are not respected when it is evident that the superior is not giving them, but rather receiving them.²²

Strength of character is one of the prime requisites for a good superior. He must display the depth of his convictions and the firmness of his courage, always tempered with prudence, in adopting and sustaining whatever decisions he judges necessary or useful for the welfare of his community. Such an attitude will inspire confidence in his subjects, and will help greatly to make the exercise of his authority less difficult for himself and for the members of his community.

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²¹ *Loc. cit.*

²² Valuy, *loc. cit.*

Cases and Studies

COMPATIBILITY OF POSTS OF LOCAL SUPERIOR AND PARISH VICAR

Is the office of local religious superior at a house of priests religious absolutely incompatible with the office of parish vicar [*vicarius actualis*] at the adjacent parochial church which is fully incorporated with the religious house? If the local superior were appointed as the parish vicar and obtained peaceful possession of the office of parish vicar, would he automatically forfeit the office of local superior, or would he continue to hold his office of local superior and be appointed invalidly as parish vicar?

IMPLICATUS

Can. 156, § 1.—*Nemini conferantur duo officia incompatibilia.*

§ 2.—*Sunt incompatibilia officia quae una simul ab eodem impleri nequeunt.*

§ 3.—*Firmo praescripto can. 188, n. 3, concessio alterius officii a Sede Apostolica facta non valet, nisi in supplici libello mentio prioris incompatibilis habeatur, aut clausula derogatoria adiciatur.*

Can. 188, 3°.—*Ob tacitam renuntiationem ab ipso iure admissam quaelibet officia vacant ipso facto et sine ulla declaratione, si clericus aliud officium ecclesiasticum cum priore incompatibili acceptaverit et eiusdem pacificam possessionem obtinuerit.*

Can. 1439, § 2.—*Incompatibilia sunt non solum duo beneficia, quorum onera universa idem beneficiarius per se implere simul nequeat, sed etiam duo beneficia quorum alterutrum ad honestam ipsius sustentationem sufficiat.*

Can. 630, § 2.—*In iis quae ad religiosam disciplinam attinent, [religiosus, qui paroeciam regit sive titulo parochi sive titulo vicarii] subest Superiori, cuius proinde est, et quidem privative respectu Ordinarii loci, in eius agendi rationem circa haec omnia inquirere eumque, si casus ferat, corrigere.*

Can. 609, § 1.—*Si ecclesia, apud quam residet communitas religiosa, sit simul paroecialis, servetur, congrua congruis referendo, praescriptum can. 415.*

Can. 415, § 3.—*Ad Capitulum spectat:*

2°.—*Invigilare ut in functionibus a parochis in capitulari ecclesia peragendis leges liturgicae observentur.*

Can. 472, 2°.—*Vacante paroecia, ante oeconomii constitutionem, paroeciae regimen, nisi aliter provisum fuerit, assumat interim . . . si tandem agatur de paroecia religiosis concredita, domus Superior.*

From the ruling expressed in canon 472, 2°. it is evident that whatever incompatibility may exist between the two offices here in

question is not to be regarded as absolute in character, for otherwise the law could not call upon the local superior to assume even temporarily the duties of office which up to the vacancy had pertained to the parish vicar (*vicarius actualis*). Likewise, from the ruling of canon 188, 3°, it is plain that the two offices must have been conferred upon the cleric in title if in consequence of the later appointments there is to result the tacit renunciation of the first office. Furthermore, since the forfeiture of the first office necessarily postulates a previous valid appointment to the second office, it is seen that the law which is stated in canon 156, §1, is not an invalidating law. So it follows that there is no absolute incompatibility between the two offices here considered, and that a tacit renunciation of the office of local superiorship does not occur as long as the local superior holds office as parish vicar by reason only of a provisory administration.

The religious who serves as a parish vicar does not hold an office which for him is at the same time a benefice. The parochial benefice in which the religious is active belongs to his community or the religious house, but not personally to him. And, even if the religious served as pastor at a parish which for the time is entrusted to his community for its spiritual care, the income received by him is not strictly his own, since it is acquired by him for his community. Hence in the case of a religious who serves as a pastor or as a parish vicar there is no room for the application of the latter clause of canon 1439, §2, with a view to a decision regarding incompatibility of benefices, even apart from the fact that the local superiorship itself is not constituted, and in consequence cannot exist, as a benefice.

With reference to offices, the notion of incompatibility exists when the incumbents of the office cannot simultaneously fulfill the obligations inherent in the offices they hold. Now, if in consequence of the enacted law one and the same person is expected, even by way of provisory administration, to fulfill the duties which pertain to two separate offices, then it is certainly not to be concluded that the permanent administration of the two offices, that is, when both are held in title, will necessarily entail incompatibility between these offices.¹

¹ Cf. G. McDevitt, *The renunciation of an ecclesiastical office*, The Catholic University of America Canon Law Studies, n. 218 (Washington, D. C.: The Catholic University of America Press, 1946), p. 125.

On the other hand, the wording of the law as expressed in canon 630, §2, along with the postulated situation deriving from canon 609, §1, makes it very manifest that the offices of local religious superior and of parish vicar or pastor should not be vested in the same person by way of an abiding arrangement.² The purpose of the law could too readily become subject to frustration under such a condition.³

Canon 472, 2°, in the part quoted above, could within the range of possibility be interpreted thus: The one who by constitutional provision becomes the local religious superior upon the death of the preceding local superior who also functioned as parish vicar will assume the interim government of the parish until the local ordinary has appointed a parish administrator (*vicarius oeconomicus*). But such an explanation seems forced and artificial alongside the very natural explanation that the local superior, as a person distinct from the parish vicar, assume the latter's place during the interim, namely until the local ordinary has appointed a parish administrator. It is to this latter interpretation that practically all the canonists subscribe in their explanation of canon 472, 2°

It appears quite manifest that under normal conditions the law insists on the appointment of separate individuals to the two offices in question. But this demand as made by the law does not imply invalidity in either of the appointments if one and the same person is made the incumbent of both offices. The loss of the earlier possessed office results only when the element of incompatibility actually accompanies the second appointment, and when in addition the second office is held in peaceful possession by its incumbent. On

² "Since the local superior takes the place of the moral person (the religious house in this case) in its relation with the actual pastor (cf. canon 609, §1, compared with canon 415, §3) it is not difficult to see the incongruity of having the same person exercise both offices, especially in the event of a conflict of rights as between the pastor and the religious house."—M. J. Clancy, *The local religious superior*, The Catholic University of America Canon Law Studies, n. 175 (Washington, D. C.: The Catholic University of America Press, 1943), p. 109, footnote 232.

³ The law as enacted in canons 630, §2, and 609, §1, does indeed presuppose separate incumbents for the offices of the local superior and of the parish vicar, but to deduce from this that the offices are by law regarded as incompatible seems an unwarranted conclusion. Incompatibility would rather have to result from the fact that the same person could not over a sustained period of time fulfill the obligations that attach to the two offices.

the other hand, invalidity in the second appointment results only if such an appointment is precluded by the law, whether universal or particular, under pain of nullity.

While it seems plainly contrary to the law for one and the same person to hold both offices in title at one and the same time, still his tenure in the two offices must be regarded as legally operative and effective as long as one cannot point to a certainly invalidating or disqualifying law relative to such tenure of office.

DOUBLE ABSOLUTION OF A RESERVED CENSURE

How can canon 2254, § 2, when absolution has already been given by the non-privileged confessor *in casu urgentiori*, nevertheless mention the previous obtaining of an absolution from the reserved censure as a condition for the issuing of the mandates on the part of the specially privileged confessor? Does the later act of absolution as given by the privileged confessor contribute anything at all to the removal of the censure? If not, why then does the law call for it?

MACHINALIS

Can. 2254, § 2.—Nihil impedit quominus poenitens, etiam post acceptam, ut supra [mediante confessario facultate non praedito], absolutionem, facto quoque recurso ad Superiorem, alium adeat confessarium facultate praeditum, ab eoque, repetita confessione saltem delicti cum censura, consequatur absolutionem; qua obtenta, mandata ab eodem accipiat, quin teneatur postea stare aliis mandatis ex parte Superioris supervenientibus.

Can. 2236, § 1.—Remissio poenae sive per absolutionem, si agatur de censuris, sive per dispensationem, si de poenis vindicativis, concedi tantum potest ab eo qui poenam tulit, vel ab eius competente Superiore aut successore, vel ab eo cui haec potestas commissa est.

Can. 2248, § 1.—Quaelibet censura, semel contracta, tollitur tantum legitima absolutione.

Can. 2251.—Si absolutio censurae detur in foro externo, utrumque forum afficit; si in interno, absolutus, remoto scandalo, potest uti talem se habere etiam in actibus fori externi; sed, nisi concessio absolutionis probetur aut saltem legitime praesumatur in foro externo, censura potest a Superioribus fori externi, quibus reus parere debet, urgeri, donec absolutio in eodem foro habita fuerit.

In canon 2254, § 2, it is presupposed that a confessor has effectively absolved a penitent from his reserved delict and censure, and then, whether or not the penitent has instituted the called for recourse for the mandates from the higher superior, opportunity is offered for approaching another confessor, who has a special faculty relative

to the remission of the censure and can grant absolution apart from any added obligation of recourse, in that he can himself issue the mandates. The penitent who thus has shown good will in seeking and obtaining a remission of his censure in line with the method made permissible in canon 2254, § 1, should surely not be less favored in law than the penitent who in his initial approach for absolution seeks out a specially privileged or authorized confessor. Accordingly the already absolved penitent can again submit his delict and censure for an absolution to be given by a privileged confessor, and through obedience to his mandates gain freedom from the making of recourse or, in the event that a recourse was instituted, from abiding by the mandates as issued by the superior.

But why should the privileged confessor have to grant absolution anew before he will issue the mandates? Or why, fundamentally, does there exist the obligation of the reconfession of at least the delict and the censure, in order that the benefit of the absolution along with the subsequent mandates may be made actual for the penitent? Apart from the fact that these things have been set as requirements by the law of the Church, one looks in vain for any further positive indication in the law.

Perhaps one should stress the fact that the privileged confessor can issue his mandates only upon his previous granting of absolution, and that he can grant absolution only upon the penitent's previous confessing of the delict and the censure. Thus, in the very nature of things, the confession is essential for the absolution, even as the absolution is essential for the later issuing of the mandates. The confession and absolution are necessary, then, not for the purpose of any fuller remission of what has already been absolved, but as conditions for the ultimate issuing of the mandates.¹

A further consideration regarding the necessitated confession and absolution may derive from the following. In the case here considered the privileged confessor has faculties solely in the sacramental internal forum. Knowledge confided to him outside of the sacrament of penance would not then and there enable him to use the faculties which he possesses solely in the capacity of confessor. This knowledge must come to him in the act of confession made by the penitent.

¹ Cf. F. E. Moriarty, *The extraordinary absolution from censures*, The Catholic University of America Canon Law Studies, n. 113 (Washington, D. C.: The Catholic University of America, 1938), p. 231.

Now, it is surely a more simple procedure for the law to require the penitent to make under the circumstances whatever confession he needs to make, and to add mention of the delict and the censure, though these latter have been absolved, than to demand in addition to the confession a retailing of the fact that with reference to the censure an absolution has been obtained, along with a mention of whether or not the recourse for the mandates has been instituted. Perfectly in line with the notion of demanding as little as needs to be furnished on the part of the penitent, the law calls simply for what is necessary, namely the confession. The penitent is not under obligation to furnish any further information than that which suffices for a fruitful reception of the sacrament of penance. Hence under favorable circumstances the confession of the delict along with the censure can satisfy all existing demands of the law.

The absolution to be imparted by the specially authorized and privileged confessor will be given by him not conditionally but absolutely. Just as nothing stands in the way of the giving of absolution from sin in an absolute manner when a past and absolved sin is resubmitted as voluntary matter for absolution, so also there is no hindrance in the external forum to the giving of a non-conditional absolution from a censure already absolved in the internal forum. In like manner the absolution can be repeated in the sacramental internal forum whenever for the later act of absolution the confessor must or may abstract from whatever has been executed in an earlier confession.

In the light of the foregoing one may note that, while the later act of absolution may contribute nothing that is essential to the actual removal of the censure, yet, if the privileged confessor is to become enabled to use his faculties of issuing the mandates, then the act of absolution must precede. This act in turn postulates the penitent's confession of at least the delict and the censure in question. And thus one may find sufficient reason for the wording of canon 2254, §2, which demands the previous confession, for it is hardly to be assumed that a further breaking down of the penitent's contumacy is intended by the law.² The law simply calls for the repetition of such acts which form the very basis for an intelligent and prudent procedure in the issuing of the mandates.

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² Coronata (*Institutiones Iuris Canonici*, IV [Augustae Taurinorum: Marietti, 1935], 183) defended this view in at least the first edition of this work. One must surely question the very presence of any contumacy in view of the fact of the earlier imparted absolution.

EXEMPTING PARISHIONERS FROM THE PASTOR'S AUTHORITY

The law of the Code governing parishes seems to stress two main points, namely, the stability of pastors and the stability of parishes. Do not Ordinaries offend against these two points when freely and even without any valid reason they grant parishioners permission to become members of a neighboring parish?

FIRMAMENTUM

The query proposed regarding permissions granted by Ordinaries authorizing parishioners to become members of parishes in the territory of which they do not reside can be answered only in the light of the principle: "*salus animarum suprema lex*". Bishops can minister to the faithful of any parish in their dioceses and they are not bound to observe the restrictions imposed on priests with regard to the functions reserved to pastors.¹ Of course, they cannot undertake to function so universally as to rob the name of pastor (*parochus*) of all meaning. But in individual cases, they do not transcend their competence when they assume to exercise functions reserved to pastors. Not only may they do this personally, they may also delegate the authority, since it is by no means a personal privilege, that is, one which they can exercise only in person. In effect, then, they may make a neighboring pastor a delegate with regard to the exercise of functions reserved to pastors. In regard to functions not reserved to pastors, there is no need for such delegation. Parishioners may assist at Mass in any church. Moreover, there is no legal difficulty raised by the fact that the Sunday offering is made in one parish rather than in another. Indeed, the obligation of making any offering to one's parish at any time is very tenuous; such as it is, it derives from the divine law rather than from positive law.² Canon 1186, 2°, for example, advises Ordinaries to persuade, rather than compel, the faithful to contribute to the repair of churches, and then only when other resources are not available.³

¹ Cf. can. 462 which lists the functions reserved to pastors.

² Cf. Hannan, "The Obligation of Church Support"—*THE JURIST*, I (1941), 343, 344.

³ Can. 1186. *Salvis peculiaribus legitimisque consuetudinibus et conventionibus, et firma obligatione quae ad aliquem spectet etiam ex constituto legis civilis:*

Canon 1379, § 3, states merely that the faithful shall not fail to assist to the extent of their ability in building and maintaining Catholic schools.⁴ In both cases, the law indicates that the enlisting of the aid of the faithful depends upon the discretion of the Ordinary. Therefore, loss of income does not afford a pastor a complaint against the local Ordinary whose intervention may cause a parishioner to feel more secure in attending Mass in a church that is not his parish church.

The foregoing remarks contemplate the situation that normally occurs. Should a local Ordinary resort to wholesale and diocesan-wide disregard of the reservation of functions to pastors, it is possible that higher authority might not be willing to bless his works.

CATHOLIC BAPTISM

I was a participant recently in a discussion regarding the abrogation of the last clause of canon 1099, § 2. One of the points raised in the discussion was the meaning of the terms "Catholic baptism". Is the distinction between this and baptism in a sect based on the intention of the minister?

PRÆCURSOR

With regard to the determination of the meaning of baptism in the Catholic Church, one notes that the intention of the adult who is baptized or of the parents or guardians of the infant who is baptized prevails over the intention of the minister, but that in asking a minister to baptize they implicitly accept his intention, and this is presumed to be to baptize in his own Church or denomination. In the case in which the parents or guardians of infants do not ask the services of the minister, v.g., in the case of an infant who is the

2° Onus reficiendi ecclesiam paroecialem incumbit ordine qui sequitur:

Bonis fabricae ecclesiae, ut supra [i.e., salva ea parte quae necessaria est ad cultum divinum celebrandum et ad ordinariam ecclesiae administrationem]; Patrono;

Iis qui fructus aliquos ex ecclesia provenientes percipiunt secundum taxam pro rata redituum ab Ordinario statuendam;

Paroecianis, quos tamen Ordinarius loci, ut supra [i.e., ad sumptus necessarios, pro eorum viribus, praestandos], magis hortetur quam cogat; . . .

⁴ Can. 1379, § 1. Si scholae catholicae ad normam can. 1373 sive elementariae sive mediae desint, curandum, praesertim a locorum Ordinariis, ut condantur.

§ 3. Fideles ne omittant adiutricem operam pro viribus conferre in catholicas scholas condendas et sustentandas.

child of infidels and who is in danger of death, the intention of the minister controls. This seems to be the case even when the minister acts unlawfully, i.e., in opposition to the wishes of the parents and in the absence of any justifying reason. This conclusion seems to be implied by the warning in the recent *motu proprio* abrogating the final clause of canon 1099, § 2; that warning consisted in an exhortation to priests and missionaries to observe religiously the rule of canons 750, 751,¹ which lay down the norms for the lawful baptism of the infant children of non-Catholics. Coronata, however, hesitated to accept this conclusion in the case of an unlawful baptism of an infant child of baptized non-Catholics.²

PRESUMPTION OF CATHOLICITY OF PARENTS

Tullia, whose father died before her birth, was baptized in the Catholic Church. At the age of six weeks, she was adopted by Protestants, and brought up in the Methodist religion according to a stipulation in the letters of adoption. There is documentary evidence of the Catholic baptism. However, the priest who conferred baptism is dead and the whereabouts of the sponsors is unknown.

In 1933 she married a non-Catholic before a minister, was divorced in 1938, and was again married in 1944, before a minister, to a Catholic with whom she had lived for some eight years prior to the death of his wife. They have a child, born before the marriage, baptized in the Catholic Church, who is now being brought up a Catholic. Tullia knows nothing of the religion of her parents. Was Tullia bound by the canonical form, and therefore, is her first marriage null because of its non-observance? Is the fact that she was baptized by a Catholic priest, with Catholic sponsors, in a Catholic church, sufficient ground for a presumption that her parents were Catholics? Is the added fact that she is willing to become a practising Catholic a reason for solving the doubt as to her parents' religion *in favorem fidei*? Her mother's consent

¹ Can. 750, § 1. *Infans infidelium, etiam invitis parentibus, licite baptizatur, cum in eo versatur vitae discrimine, ut prudenter praevideatur moriturus, antequam usum rationis attingat.*

§ 2. *Extra mortis periculum, dummodo catholicae eius educationi cautum sit, licite baptizatur:*

1° *Si parentes vel tutores, aut saltem unus eorum, consentiant;*

2° *Si parentes, idest pater, mater, avus, avia, vel tutores desint, aut ius in eum amiserint, vel illud execere nullo pacto queant.*

Can. 751. *Circa baptismum infantium duorum haereticorum aut schismaticorum, aut duorum catholicorum qui in apostasiam vel haeresim vel schisma prolapsi sint, generatim servantur normae in superiore canone constitutae.*

² Cf. Coronata, *De Sacramentis*, III (Taurini: Marietti, 1945), n. 343.

to the stipulation that she should be brought up a Methodist does indeed cast a doubt on the mother's religion. But she cannot be found.

UNICITAS

Even in the absence of the mother's consent to the stipulation that the child be reared in the Methodist religion, the fact of Catholic baptism does not afford ground for a presumption that both parents were Catholic. Indeed, if the parties to a mixed marriage are faithful to the ante-nuptial promises, the child born to such a marriage is normally baptized a Catholic. One would be entirely justified in supposing in this case that the father was a non-Catholic; that justification is even greater in regard to the mother. Adoption of the child by Methodists argues for non-Catholic contacts somewhere in the ancestry. It is possible that the mother was so poor that she was willing to rid herself of the burden of supporting the child even at the cost of agreeing to the child's rearing by Methodists who were perfect strangers to her. But such a possibility is far from supporting a presumption that both parents were Catholic.

The privilege of the faith refers to the privilege of a newly baptized person in reference to the bond of a marriage that was not a Sacramental marriage. In this case, the woman involved is a baptized Catholic already bound to return to the practice of her religion in virtue of her Catholic baptism.

It is not indicated whether the non-Catholic whom she married was baptized or not. If he was unbaptized, the marriage is invalid because of the impediment of disparity of worship,¹ which binds even those baptized Catholics who have been reared from their infancy outside the Catholic Church.²

If, on the other hand, he was also baptized, the marriage was a Sacramental marriage, if it was valid; and it must be presumed to

¹ Can. 1070, § 1. Nullum est matrimonium contractum a persona non baptizata cum persona baptizata in Ecclesia catholica vel ad eandem ex haeresi aut schismate conversa.

§ 2. Si pars tempore contracti matrimonii tanquam baptizata communiter habebatur aut eius baptismus erat dubius, standum est, ad normam can. 1014, pro valore matrimonii, donec certo probetur alteram partem baptizatam esse, alteram vero non baptizatam.

² Cf. Code Commission, 29 apr. 1940—AAS, XXXII (1940), 212; Bouscaren, *The Canon Law Digest*, II, 290, 291.

be valid in the absence of adequate proof that both parents of the woman were Catholic.³

It should be noted that if the previous marriage of the man with whom the woman is now living was a valid marriage there probably exists between them the impediment of crime.⁴

ACTION CONTRARY TO CONDITION

In a matrimonial cause, where the validity of the marriage is challenged because of an alleged "*conditio contra bonum prolis*", would the admission by both parties that one act of natural marital intercourse occurred destroy the foundation for such a trial?

ERASUM

In reference to a condition "*contra bonum prolis*" in relation to a marriage case involving factual consummation of the marriage, it seems that the latter does not preclude the possibility that such a condition was made. If it was made, the marriage was invalid in spite of the consummation, for a condition opposed to the substance of marriage renders it invalid from the beginning.¹ The mere withdrawal of the condition would not suffice to validate the marriage. On the other hand, if the condition was entirely internal, a renewal of the consent made internally would suffice.² In this case, neither the condition nor the internal renewal of consent can be proved. Consequently, it would be futile to introduce the case into a tribunal for a consideration of the validity of the marriage. The marriage is

³ Can. 1014. *Matrimonii gaudet favore iuris; quare in dubio standum est pro valore matrimonii, donec contrarium probetur, salvo praescripto can. 1127.*

⁴ Can. 1075. *Valide contrahere nequeunt matrimonium:*

1°. *Qui perdurante eodem legitimo matrimonio, adulterium inter se consumarunt et fidem sibi mutuo dederunt de matrimonio ineundo vel ipsum matrimonium, etiam per civilem tantum actum, attentarunt.*

1 Can. 1092. *Conditio semel apposita et non revocata: . . .*

2° *Si de futuro contra matrimonii substantiam, illud reddit invalidum; . . .*

2 Can. 1136, § 1. *Matrimonium irritum ob defectum consensus convalidatur, si pars quae non consenserat, iam consentiat, dummodo consensus ab altera parte praestitus perseveret.*

§ 2. *Si defectus consensus fuerit mere internus, satis est ut pars quae non consenserat, interius consentiat.*

simply presumed valid.³ The same holds true if the condition is occult, though external; in that case, too, it is impossible to prove the condition.

If the condition is external and capable of proof,⁴ the marriage can be validated, in the case in which a Catholic is involved, only by a renewal of consent in accordance with the required form. Mere natural intercourse cannot, in this case, enter into the problem, since the equivalent consent it might possibly contain is not sufficient for a validation of the marriage.

Even in the case of non-Catholics, baptized or unbaptized, whether the invalidity of the marriage is known or not, it seems that the natural intercourse would be performed with the same consent as that originally given. Since this was not marital consent, the subsequent intercourse would, it seems, give no more ground for supposing a new marital consent than in the case of a man and woman who never gave any consent, defective or otherwise, prior to the act of intercourse.

It is true that the act of natural intercourse may throw some doubt on the character of the condition originally imposed on the consent. However, it seems that it does not automatically rule out the possibility that such a condition was made.

A LEGAL DOUBT CONCERNING THE WORKINGMAN'S INDULT?

In commenting on the "workingman's indult" practically all authors seem to exclude professional men, preachers, business men, etc. Some limit the indult to those who do manual labor, thereby excluding all "white collar" workers, arguing from a response of the Sacred Penitentiary given March 9, 1925, in regard to those who could gain the indulgence of the jubilee year of 1925 without going to Rome. In practice, could it be said that there is a doubt as to what classes of workers are to be considered "workingmen" and make the latter term all-inclusive?

COMPETENS

³ Can. 1014. *Matrimonium gaudet favore iuris; quare in dubio standum est pro valore matrimonii, donec contrarium probetur, salvo praescripto can. 1127.*

⁴ Can. 1136, § 3. *Si [defectus consensus] fuerit etiam externus, necesse est consensum etiam exterius manifestare, vel forma iure praescripta, si defectus fuerit publicus, vel alio modo privato et secreto, si fuerit occultus.*

It is doubtful whether the "workingman's indult" is operative anywhere in the United States at the present time. Since 1932 local Ordinaries have been required to seek a renewal of this indult by individual application.¹ On the other hand, the indult of December 19, 1941, was so extensive as to permit all that the workingman's indult permitted, since it allowed local Ordinaries within the limits of their discretion to grant dispensations from the law of fast and abstinence, with only two restrictions, viz., Ash Wednesday and Good Friday.² On January 28, 1949, a decree of the Sacred Congregation of the Council limited it further by requiring in addition that all Fridays be observed as days of abstinence and that the vigils of Christmas and of the Feast of the Assumption be observed as days of fast and abstinence.³

As a consequence of the foregoing, the interpretation of the concession made by local Ordinaries at the beginning of Lent resolves itself into an interpretation of what the local Ordinaries meant. In any event, if there is a doubt, the doubt concerns not the law of abstinence, but the extent of the relaxation of the law. Moreover, the opinions of authors referring to the workingman's indult offer little in the way of help in interpreting a local Ordinary's use of the more extensive faculty of dispensing. Even as to their interpretation of the workingman's indult, one could scarcely say that the authors involved were of sufficient weight to give extrinsic probability to their opinions. As a consequence, even as to the interpretation of that indult, one would need to rely on the intrinsic arguments offered by the respective authors in forming one's conscience. But even under the workingman's indult, local Ordinaries could have given an official interpretation and in doing so they could have given a wide interpretation to the faculty they possessed, since it was a general faculty.⁴

¹ Cf. Bouscaren, *The Canon Law Digest*, II, 364.

² Cf. S.C. Neg. Eccl. Extr., 19 dec. 1941—AAS, XXXIII (1941), 516; *THE JURIST*, II (1942), 388; Bouscaren, *The Canon Law Digest*, II, 363.

³ Cf. S.C.C., decr. 28 jan. 1949—AAS, XLI (1949), 32, 33; *THE JURIST*, IX (1949), 263.

⁴ Can. 85. *Strictae subest interpretationi non solum dispensatio ad normam can. 50, sed ipsamet facultas dispensandi ad certum casum concessa.*

Can. 50. *In dubio, rescripta quae . . . adversantur legi in commodum privatorum, . . . strictam interpretationem recipiunt; cetera omnia latam.*

Cf. Cicognani, *Canon Law* (2. ed., Philadelphia: The Dolphin Press, 1935), p. 858.

RUBRICS INDUCED BY CUSTOM

Is it permissible to have a solemn funeral Mass in the presence of the corpse on the feast of the Circumcision of Our Lord in view of a well established custom in this part of the country of not having funerals on holy days of obligation? Even though the rubrics in *Additiones*, III, 4, do not mention this Feast among the days on which a funeral Mass is prohibited, and the ruling of the Sacred Congregation of Rites of October 16, 1940, does not exclude this day, as it is only a second class Feast, yet it seems to me that canons 25 and 29 ought to be considered in scheduling a Requiem Mass on this holy day of obligation.

EXCUBITOR

The difficulty about imposing an obligation arising from a custom outside the law is to determine whether the community introducing the custom had the intention of initiating an obligatory practice. It seems that the practice by which funeral Masses are not scheduled on the Feast of the Circumcision derives from the convenience of pastor and parishioners rather than from any set purpose on the part of either to observe in any specially devotional manner the specific Feast or to attribute to it honors above that which the universal Church bestows on it. For that reason it seems that an obligatory custom is not involved in the practice of not scheduling funeral Masses on the Feast noted.

THE PRESERVATION OF HUMAN SURGICAL SPECIMENS

What is the law or the mind of the Church in regard to the preservation of human fetuses, monstrosities, etc., in the laboratories of hospitals? After all useful scientific information and study has been made should they not be buried—even when not baptized—instead of retained in glass jars for indefinite periods of time without apparent use or necessity?

CELATOR

There is no doubt that a baptized fetus should be buried in a blessed cemetery and the same holds true of the amputated members of baptized persons.¹ In the case of amputated members, if the non-Catholic surgeons order that they be burned, Catholics are not

¹ Can. 1239, § 3. Omnes baptizati sepultura ecclesiastica donandi sunt, nisi eadem a iure expresse priventur.

Can. 1205, § 1. Cadavera fidelium sepelienda sunt in coemeterio quod, secundum ritus in probatis liturgicis libris traditos, sit benedictum, sive sollemni sive simplici benedictione ab iis data de quibus in can. 1155, 1156.

compelled to resist their order.² The obligation to bury the unbaptized or the members of their bodies is not apparent. Indeed, the reverent use of bodies for scientific purposes, if the permission of the local Ordinary can be presumed, seems not forbidden.³ Of course, if the uselessness of preserving baptized fetuses is apparent, there can be no doubt of the obligation to bury them. One should perhaps consult a Catholic physician to determine whether the preservation of them serves any scientific purpose.

CERTIFICATION OF RIGHT TO CHRISTIAN BURIAL

As the chaplain of a hospital, I am frequently called to administer the last rites. It has been my practice to refuse to certify that the deceased patient is entitled to Christian burial, maintaining that any certification must come from the pastor of the parish in which the decedent actually lived.

However, on one or more occasions it has happened that I had more knowledge of the decedent than the proper pastor, who actually had none, or the remains were those of a *vagus* known to neither myself nor the pastor of the last domicile.

Am I acting correctly in refusing to state that I have given the last Sacraments? Is it not better to refuse in every case than to appear to violate the seal by refusing in a particular instance?

SEGREGATUS

In relation to the right of hospital patients to Christian burial, one notes that canon 1205¹ requires that the faithful be buried in a blessed cemetery, canon 1239² entitles all who are baptized to Christian burial unless they are deprived of it by law, and canon

² S.C.S. Off., 3 aug. 1897—*Acta Sanctae Sedis*, XXX (1897), 630 seq.; cf. Coronata, *Institutiones Iuris Canonici*, II (2. ed., Taurini: Marietti, 1939), n. 788, p. 86.

³ Cf. Coronata, *loc. cit.*

¹ Can. 1205. *Cadavera fidelium sepelienda sunt in coemeterio quod, secundum ritum in probatis liturgicis libris traditos, sit benedictum, sive sollempni sive simplici benedictione ab iis data de quibus in can. 1155, 1156.*

² Can. 1239, § 1. *Ad sepulturam ecclesiasticam non sunt admittendi qui sine baptismo decesserint.*

§ 2. *Catechumeni qui nulla sua culpa sine baptismo moriantur, baptizatis accensendi sunt.*

§ 3. *Omnes baptizati sepultura ecclesiastica donandi sunt, nisi eadem a iure expresse priventur.*

1240³ indicates that notoriety is required to deprive public sinners of the right to Christian burial. In the absence of such notoriety, all that is needed to entitle a person to Christian burial is to show that he is a Catholic. In the case of those whose public sin is notorious, any signs of repentance suffice to entitle him to Christian burial. It seems that the hospital authorities would be able to supply information as needed in either case, i.e., they could state whether the deceased was a Catholic (in the one case) and whether he had given signs of repentance, v.g. by asking for a priest (in the other case). Since the hospital can give the information needed, there seems no reason why a chaplain should be required to do so. But if he merely reported that the deceased was a Catholic (in the one case) or that he called for a priest (in the other), it is hard to see how contrary statements could be construed as even the use of knowledge obtained in confession, since such information is available not only to the chaplain but also to other persons in comparable positions in the hospital. To say that a deceased person was not a Catholic or that a notorious sinner did not call for a priest or show any other signs of repentance is to speak entirely in the external forum, whether the speaker be the chaplain or the superintendent of the hospital. And a refusal to certify that the deceased is entitled to Christian burial should not be regarded as more than this; i.e., such a refusal should be construed to mean that the deceased either was not a Catholic or that he was notoriously a sinner who gave no signs of repentance in the external forum.

³ Can. 1240, § 1. *Ecclesiastica sepultura privantur, nisi ante mortem aliqua dederint poenitentiae signa:*

1°. *Notorii apostatae a christiana fide, aut sectae haereticae vel schismaticae aut sectae massonicae aliisque eiusdem generis societatibus notorie addicti;*

2°. *Excommunicati vel interdicti post sententiam condemnatoriam vel declaratoriam;*

3°. *Qui se ipsi occiderint deliberato consilio;*

4°. *Mortui in duello aut ex vulnere inde relato;*

5°. *Qui mandaverint suum corpus cremationi tradi;*

6°. *Alii peccatores publici et manifesti.*

ARE RECTORS OF RELIGIOUS SEMINARIES PASTORS?

Is there any warrant for claiming the parochial powers, granted to rectors of seminaries by canon 1368, for superiors of the houses of studies of clerical religious?

LIBRA

In regard to the possession by the superior of a house of studies of the parochial rights enjoyed by the rector of a seminary, one finds no indication in Title XII of the II Book of the Code that such is the case. Indeed, canon 1222 treats of the matter of funerals in a way that would seem to indicate a deliberately rejected opportunity to assign to such superiors the rights of the rector of a seminary. For in canon 1222 reference is made to the right of the rector of the seminary to bury those who die in the seminary, while the right of the superior of a religious house to bury those who lived in it as students is definitely denied.¹

The previous canon, in § 3, does accord to the superior of a religious house the right to bury servants who die in the house.² Moreover, canon 514, § 1, authorizes superiors to administer Holy Viaticum and Extreme Unction to all who board within the house, even though they are not subjects of the superior;³ while canon 875, § 1, authorizes the superiors of houses of exempt clerical institutes to

¹ Can. 1222. Quod attinet ad defunctos qui in domo etiam regulari vel collegio degebant ratione hospitii, educationis vel infirmitatis, et ad defunctos in hospitali, standum est canonibus 1216-1218, nisi constet de iure particulari aut privilegio; quod vero ad illos attinet qui in Seminario moriuntur, servetur praescriptum can. 1368. Canons 1216-1218 assert the rights of the pastor to the burial of his parishioners, while canon 1368 exempts the seminary from parochial jurisdiction and confers the parochial rights on the rector of the seminary.

² Can. 1221, § 3. Quae de novitiis dicta sunt §§ 1. 2. valent quoque de famulis actu servientibus et intra domus septa stabiliter commorantibus; qui tamen, si extra religiosam domum decesserint, funerandi sunt ad normam can. 1216-1218. The servants may choose whatever church they like for their funeral; cf. can. 1223, § 1, in regard to novices.

³ Can. 514, § 1. In omni religione clericali ius et officium Superioribus est per se vel per alium aegrotis professis, novitiis, aliisque in religiosa domo diu noctuque degentibus causa famulatus aut educationis aut hospitii aut infirmarum valetudinis, Eucharisticum Viaticum et extremam unctionem ministrandi.

grant delegation for the confessions of all inmates of houses subject to them.⁴

ANTHOLOGIES OF FALSE PHILOSOPHIES

Is it permissible to place at the disposal of Catholic students anthologies of selections of modern philosophy in general or, in particular, of the philosophy of individual philosophers? The compilers and commentators of the works contemplated are non-Catholics. If it is held that it is not permissible to place such works at the disposal of Catholic students, is it not inconsistent, then, to allow them to consult expositions of the philosophy of the same individual philosophers when such expositions are made by authors favorable to the philosophers treated?

PROPORTIO

While anthologies of forbidden works containing only excerpts from the latter are judged rather on their own independent character in the light of the purpose of the compiler,¹ nevertheless even when so judged they can be forbidden as books that fall under one or other of the categories of canon 1399. For the same reason expositions of the philosophy of those whose works have been forbidden may also fall under one or other of the categories of that canon. Principally they would fall under canon 1399, 2°. ² In the degree in which they defend or propagate heresy, they would involve, if written by non-Catholics, the censure of specially reserved excommunication as specified in canon 2318, § 1.³

⁴ Can. 875, § 1. In religione clericali exempta ad recipiendas confessiones professorum, novitiorum aliorumve de quibus in can. 514, § 1, iurisdictionem delegatam confert quoque proprius eorundem Superior, ad normam constitutionum; cui fas est eam concedere etiam sacerdotibus a clero saeculari aut alius religionis.

¹ Cf. Pernicone, *The Ecclesiastical Prohibition of Books*, The Catholic University of America Canon Law Studies, n. 72 (Washington, D. C.: The Catholic University of America, 1932), p. 111; De Meester, *Juris Canonici et Juris Canonico-civilis Compendium*, III (9. ed., Brugis: Desclée De Brouwer, 1926), n. 1357, b.

² Can. 1399. Ipso iure prohibentur: . . . 2°. Libri quorumvis scriptorum, haeresim vel schisma propugnantes, aut ipsa religionis fundamenta quovis modo evertere nitentes; . . .

³ Can. 2318, § 1. In excommunicationem Sedi Apostolicae speciali modo reservatam ipso facto incurrunt, opere publici iuris facto, editores librorum

One can readily agree, therefore, that, with regard to prohibition, there is no difference between the clearly prohibited original works and a compilation of representative selections from them. One can also readily extend this prohibition to the expositions of the philosophy presented in the clearly prohibited original works, when such expositions are published by authors favorable to the author of the original work with frequent quotations from the latter.

It seems, therefore, definitely indicated that the philosophies of those whose works are forbidden should be available to Catholic students only in works that demonstrate the falsity inherent in them. Should any student, for a special reason, need further contact with the source material, he should present his reason to those who are authorized to give him the required permission, under proper safeguards, to make the contact deemed necessary.

DONOR'S INTENT

I placed in an undertaker's parlor Mass cards with the following script: "Please apply the enclosed offering according to your preference toward either high or low Masses for the soul of _____". At a recent funeral I was handed several of them containing offerings respectively of five dollars, two dollars, and one dollar. In this diocese there is lawfully established a two-dollar stipend for designated low Masses and the people of my parish have been publicly told of this. May I apply all the offerings to high Masses, singing as many as the total of the offerings will permit at the stipend of five dollars? If not, may I apply them to designated Masses? Or must I say a Mass for every one of the offerings of one dollar?

TABULARIUS

In reference to the stipends, if the donors understood the meaning of the script on the Mass card to which they attached the respective stipends, it would seem that they gave *carte blanche*. This, however, was according to a formula devised after the manner of the fine print which installment firms append to a contract. One says this for the reason that one must read the text of the script twice before seeing clearly that nothing was left by it to the discretion of the donors. One believes, therefore, that their intention cannot be

apostatarum, haereticorum et schismaticorum, qui apostasiam, haeresim, schisma propugnant, itemque eosdem libros aliosve per apostolicas litteras nominatim prohibitos defendentes aut scienter sine debita licentia legentes vel retinentes.

learned from the skillfully worded script but rather from what the Catholics of the community normally expect to be understood from the offering of a stipend of one dollar, of two dollars, and of five dollars. In any event, the local Ordinary should be consulted, if any other interpretation is sought to be placed upon their intention in making the offerings.

COLLOQUIAL REVIEW OF A CASE'S MERITS

Is a judge in a matrimonial cause forbidden to discuss the merits of the case privately with the defender of the bond or the advocate?

MORIGERUS

In regard to consultation between a judge and the *defensor* or the advocate, there is found no explicit prohibition in the law. It could easily become the basis for an exception of suspicion against the judge initiated by the *defensor* should the consultation be one with the advocate and vice versa. The *defensor vinculi* himself could also become suspect in the case of a consultation between him and the judge. This suspicion would result not so much from the discussion of the merits of the case as from the possibility that undue influence might arise from the predominance of the personality of one of the parties to the consultation in reference to the personality of the other.¹ A weak personality is more easily rendered receptive under the relaxing circumstances of a private conversation than in the environment of the formalities attending the public hearing of a case.

WORTH OF DOMESTIC SERVICE

A and B, two Catholics, are validly married. They live together for a number of years, then separate. A obtains a civil divorce which B, the woman, does not contest. B then attempts marriage civilly with C and lives with him a number of years. Now B wishes to go back to the Sacraments. Can she in conscience sue C for an adjustment and retain all that the civil law allows her? It should be added that B was not a partner in the business of C.

AESTIMATOR

¹ Can. 1613, § 1. Iudex cognoscendam ne suscipiat causam, in qua ratione . . . intimae vitae consuetudinis, aliquid ipsius intersit, vel in qua antea advocatum aut procuratorem egerit.

§ 2. In iisdem rerum adiunctis ab officio suo abstinere debent iustitiae promotor et defensor vinculi.

One ventures to offer the opinion that a woman can ask for alimony even when the marriage on which it is based was an invalid marriage in the eyes of the Church. One bases this on the more than probable opinion of moralists that there is underlying her relationship a contract, "*facio ut des*",¹ which is sufficient to justify her claim. That it is a more specific contract, i.e., the contract of marriage, which the secular judge holds to be the basis of the claim, does not dislodge the underlying contract which is rather, in the eyes of the secular judge, a part of the marriage contract which he would call the *consortium* (including obedience and service on the part of the woman and protection and support on the part of the man). Since the basis of the claim remains even in the case of a canonically invalid marriage, it can be asserted by the woman; more, she can invoke the authority of the secular judge to enforce it, since the canonical invalidity of the marriage does not rob the claim of any substantial element recognized by the secular judge.

LAPSE OF PERMISSION FOR ASSISTANCE AT MARRIAGE

A couple preparing for marriage asks the pastor's permission for the bride's brother, a priest of another diocese, to officiate at the marriage. The pastor not only consents, but tells them that they should inform the priest he is delegated for the marriage. When the extra-diocesan priest arrives the day before the marriage, he learns that the pastor died the previous night.

By reason of canon 207, § 1, considered in conjunction with canon 61, he fears that the delegation for the marriage may have been lost because it was given for a particular marriage and he has done nothing about the matter so far except to come to the scene of the proposed wedding. May he validly officiate at the marriage on the strength of the delegation given by the deceased pastor?

POSTERUS

The validity of the permission, even though communicated to the priest brother of the bride through the parties, cannot be seriously questioned,¹ and it is not questioned in the statement of the case here presented. Moreover, there seems sufficient acceptance of the permission, a prerequisite required by the more common opinion of

¹ Cf. Arregui, *Summarium Theologiae Moralis* (8. ed., Bilbao, 1923), n. 359. Merkelbach, *Summa Theologiae Moralis* (3 vols., Parisiis: Desclée, De Brouwer et Soc., 1931-1933), II, n. 462.

¹ Cf. De Smet, *Tractatus Theologico-canonicus de Sponsalibus et Matrimonio* (4. ed., Brugis: Beyaert, 1927), n. 117, p. 95, note 5; Coronata, *Tractatus Canonicus de Sacramentis* (3 vols., Taurini-Romae: Marietti, 1943-1946), III, n. 542, p. 759.

authors.² The question of acceptance before the death of the pastor seems to depend on the solution of the problem in the case based on the lapse of the permission granted. If the permission does not lapse at the pastor's death, it remains in existence to be accepted.

It is correct to apply to the permission granted for assistance at marriage the norms governing delegation, since the Code itself, while calling it a permission in canons 1095, §2, and 1096, refers to it as delegation in canon 1094. Now canon 207, §1,³ intimates that delegation does not lapse with the loss of office on the part of the principal, except as provided in canon 61. And canon 61 specifies two cases in which delegation does lapse in such an instance, namely, when a special condition to this effect accompanies the delegation and when the delegation consists of an authorization to confer a favor on specific persons, if, in the latter case, the one delegated has taken no steps to exercise the power conferred.⁴

One is unwilling to see in the permission to assist at marriage the exception mentioned in canon 61, i.e., the power to grant a favor to specified persons. This exception, as an exception to the law, should be strictly interpreted.⁵ Indeed, this conclusion is justified also on the ground that it is a limitation of the free exercise of a right.⁶ Since canon 61 is found under the title dealing with rescripts, one seems warranted in concluding that the exception contemplated by that canon is the case in which the agent acts as the intermediary of his principal in bestowing a favor. Can it be said that a priest delegated for assistance at a marriage acts as the intermediary of

² Cf. Coronata, *ibid.*, n. 543.

³ Can. 207, § 1. *Potestas delegata exstinguitur, expleto mandato; elapso tempore aut exhausto numero casuum pro quo concessa fuit; cessante causa finali delegationis; revocatione delegantis delegato directe intimata aut renuntiatione delegati deleganti directe intimata et ab eodem acceptata; non autem resoluta iure delegantis, nisi in duobus casibus de quibus in can. 61.*

⁴ Can. 61. *Per Apostolicae Sedis aut dioecesis vacationem nullum eiusdem Sedis Apostolicae aut Ordinarii rescriptum perimitur, nisi aliud ex additis clausulis appareat, aut rescriptum contineat potestatem alicui factam concedendi gratiam peculiaribus personis in eodem expressis, et res adhuc integra sit.*

⁵ Can. 19. *Leges quae . . . exceptionem a lege continent, strictae subsunt interpretationi.*

⁶ Can. 19. *Leges quae . . . liberum iurium exercitium coarctant, . . . strictae subsunt interpretationi.*

the pastor in assisting at a marriage? Does the pastor confer a juridical favor on the parties by assisting at their marriage? On the contrary, corresponding to his right to assist at it, there is a corresponding parochial obligation. Now if the pastor does not confer a favor on the parties by assisting in person at their marriage, neither does he confer a favor on them when he assists at their marriage through a properly authorized representative. The latter is, therefore, not the intermediary of the pastor in bestowing a favor on the couple. If the yielding of his right be considered a favor, the latter is not conferred by the priest given the permission to assist at the marriage.

This favor is separable from the appointment of another priest; such an appointment is not needed if the assisting priest is able validly to assist at the marriage without it. Indeed, in the given case, the favor seems to have been bestowed directly by the pastor himself on the parties in response to their request. Moreover, on account of the limitations of 1096, §1, one should conclude that a pastor cannot use an intermediary for the purpose of implicitly yielding his right in an act of appointing for the marriage a priest who needs that appointment for valid action. If he yields his right to another pastor who will assist at the marriage within his own parish, then the favor may be bestowed through an intermediary. In that case, if the parties have not yet received the favor from the intermediary at the time of the death of the pastor, it seems that the exception of canon 61 would become operative and the intermediary could not bestow the concession on the parties. Even this restriction is not operative, however, if the intermediary was merely a messenger; in regard to it, as in relation to the entire foregoing discussion, one regards an intermediary as one possessing some power of his own, even though delegated and even though exercised in the name of another.

Even if the yielding of the right be considered a favor to the priest officiating rather than to the parties, there can be seen in the present case no evidences of an intermediary. The parties who were told that the bride's brother was authorized to officiate at the marriage were mere messengers. One should conclude, then, that neither the parties nor the delegated priest were appointed intermediaries for the communication of the pastor's favor. For that reason, the exception specified in canon 61 seems inapplicable.

THE ROLE OF THE GOSPELS IN THE ANTI-MODERNISTIC OATH

Canon 1622, § 1, provides that when an oath is taken by judges, witnesses, experts *et al.* at a trial, priests should touch their breast when taking the oath, and others should touch the book of the Gospels. Should this same norm be followed by a priest when taking the oath against Modernism before he undertakes any of the offices or functions for which that oath is prescribed?

MANICA

Since, in all probability, the majority of persons obliged to take the anti-Modernistic oath are priests and since at the end of the oath the support of the Gospels is explicitly called upon in the fulfillment of it, one might be inclined to conclude that the norm to be followed by priests in taking the anti-Modernistic oath is that suggested by the formula itself, since the latter makes no exception for them, and that they, as well as others, should touch the Gospels. This conclusion would depend on the failure of the formula to provide an exception. This negative argument, then, is all that one can offer in opposition to the norm of canon 1622, §1, unless one wishes to rule out the latter norm entirely as belonging only to procedural law. But it seems to be a precipitate action to dismiss so peremptorily the norm of canon 1622, §1. The exception there stated is made not in contemplation of the more effective prosecution of court business. If that were so, one would be entirely justified in limiting its extension to procedural application. On the other hand, the exception seems irrelevant so far as the prosecution of court business is concerned. It is made as a gesture of deference to the priesthood, a gesture that is not demanded by the needs of judicial procedure nor excluded by the silence of norms set forth in the performance of other juridical actions. The gesture is surely no more appropriate in relation to court procedure than in relation to the taking of the anti-Modernistic oath. One is justified, then, in taking that gesture as a sign of at least the *praxis curiae*, and in prescindendo from the environment of canon 1622, §1, in which it is found stated in order to give it wider application, i.e., to cases in which it is not explicitly excluded.

TESTIMONIALS FOR ORDINATION OF ONE TRAINED IN EXTRA-DIOCESAN SEMINARY

A student for the priesthood is sent by his bishop to the seminary of another diocese for his course of studies. Does the bishop of the diocese in which the seminary is located have to be asked for testimonial letters for the period preceding any ordination (when that period is more than six months in duration):

- a) before the proper bishop issues dismissorial letters for the ordination;
- b) if the bishop of the diocesan seminary in question is going to confer the orders personally;
- c) if the proper bishop of the seminarian is going to confer the orders personally?

SEIUNGENS

The latest decision prior to the Code relating to the point involved in these questions came from the Holy Office and held that testimonial letters were required in such cases not only of the rector but also of the local Ordinary, even though the seminarian had resided within the seminary during the whole period of his stay outside his diocese.¹ However, the Sacred Congregation of the Council itself recounted its own wavering policy in rendering decisions in cases involving this issue.² Many³ said it was the practice in Paris not to require testimonial letters of the local Ordinary in such cases and Regatillo⁴ now holds that this practice can be safely followed. His main argument is the uselessness of such testimonials, since the local Ordinary would know practically nothing of the seminarian, except what he learned from the rector of the seminary. The juridical answer to that argument is that it is not necessarily so. Even prescindendo from a special zeal on the part of the local Ordinary in this respect, it is entirely possible, if not probable, that the local Ordinary has sources of information not available to the rector of the seminary. Therefore, in the absence of an immemorial custom, one is inclined to argue that the testimonial letters are needed in all three cases outlined in the statement of the case. Where it is the local Ordinary of the diocese in which the seminary is located who

¹ S.C.S. Off., 28 oct. 1887—*Analecta Ecclesiastica*, IV (1896), 206, 207.

² Cf. S.C.C., in *Parentina et Polen.*, 14 iul. 1894—*Acta Sanctae Sedis*, XXVII (1894), 159-162.

³ *Praelectiones de Sacra Ordinatione* (Parisiis, 1905), n. 126.

⁴ *Ius Sacramentarium* (2 vols., Santander: Sal Terrae, 1945, 1946), II, n. 146.

confers the orders, the testimonials are needed because the ordaining prelate cannot act without dimissorial letters issued by the proper bishop, while the latter cannot issue the dimissorial letters without the testimonial letters of the ordaining prelate.⁵

TESTIMONIALS FOR ORDINATION OF EX-RELIGIOUS

A candidate for first tonsure was previously a novice, and subsequently a professed member of an exempt religious community. During the period of his attachment to the community, he spent not only the canonical year in the diocese where the novitiate is located, but afterwards by reason of various assignments remained more than six months in several different dioceses.

Before conferring first tonsure:

- a) must the bishop seek testimonial letters from the local Ordinaries of the dioceses where the ex-religious was stationed for more than six months?
- b) must he request a testimonial letter from the major Superior of the religious community, and would such a letter suffice without the letters mentioned in the first question?
- c) is the same process to be followed if the religious community is non-exempt?
- d) will it make any difference if the exempt community is lay or clerical?

COMMENDATOR

Gasparri¹ held before the Code that it was probable that regular Ordinaries could grant the requisite testimonials, even in the case of novices, for the ordination as seculars of those who had spent under their jurisdiction the time sufficient, according to the canons, for the contraction of an impediment. But he denied this competence to the superiors who lack jurisdiction. Many² subscribed to both doctrines. Coronata³ agrees with the view that regular Ordinaries are competent to issue these testimonials.

⁵ Cf. Quinn, *Documents Required for the Reception of Orders*, The Catholic University of America Canon Law Studies, n. 266 (Washington, D. C.: The Catholic University of America Press, 1948), pp. 115-117.

¹ *Tractatus Canonicus de Sacra Ordinatione* (2 vols., Parisiis et Lugduni, 1894), n. 711.

² *Praelectiones de Sacra Ordinatione* (Parisiis, 1905), n. 125, 5, 6.

³ *Tractatus Canonicus de Sacramentis* (3 vols., Romae-Taurini, 1943-1946), n. 178.

From these considerations the following conclusions seem warranted.

a) Testimonial letters are needed from some Ordinary in the case of the ordination of a secular who was once a religious covering the period that he was a religious and a novice.

b) The testimonial letters of a regular Ordinary probably suffice.

c) The local Ordinaries of the places in which the novice and the religious lived must be approached in the case of non-exempt institutes, though the respective local Ordinaries might all delegate a superior to issue the testimonial letters as one document representing them all.⁴

d) In the absence of jurisdictional authority in the institute, even though the latter be exempt, testimonial letters cannot be issued by the religious superior.

JEROME D. HANNAN

THE CATHOLIC UNIVERSITY OF AMERICA

* * * * *

LAW COLLECTIONS IN THE LIBRARY OF CONGRESS

A total of 59,807 readers made use during the last fiscal year of the 183,197 books in the collections of the Law Library of the Library of Congress. 19,442 volumes and pamphlets were acquired, bringing the size of the law collections to 698,100 volumes and pamphlets. About one-fourth of the acquisitions came from Latin-America. More than two-thirds of the acquisitions came from foreign sources.

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WHAT CONSTITUTES A WORK OF ART?

The meaning of the Copyright Act with regard to this question was interpreted broadly by the Copyright Office of the Library of Congress to include works that have a utilitarian purpose, provided that they have definite artistic characteristics.

⁴ Cf. Quinn, *Documents Required for the Reception of Orders*, The Catholic University of America Canon Law Studies, n. 266 (Washington, D. C.: The Catholic University of America Press, 1948), p. 157.

Decrees and Decisions

CANONICAL

ANNUAL STATEMENT OF THE HIERARCHY

The annual statement of the Hierarchy of the United States, entitled "The Christian Family", emphasized four principles on which the stability of the family is grounded: permanence, freedom, economic security, and religion.

It said in part: "Perhaps the most evident and devastating effect of the disregard of supernatural faith in human society is to be found in what it has done to family life. The world, which discounts supernatural faith in God's revelation, praises family life, declares its place and function essential to human well-being, and speaks with high sentiment of the sacredness of the home. Yet by countless acts and agencies it moves steadily to disrupt family life and to destroy the home. It approves and facilitates divorce as a cure for domestic ills. It accepts multiple marriages, which usually mean a hopeless entanglement of the infelicities of a plurality of broken homes. It sponsors planned parenthood by use of unnatural and morally degrading means, thus infusing poison into the heart of family life by destroying in husband and wife the self-respect and mutual reverence on which alone are built enduring love and patient fidelity. It is unconcerned, for the most part, about its manifest duty of removing the great difficulties that lie in the way of those who wish to marry and establish homes. Its social legislation in point of suitable housing, decent material facilities, security in income and prospects, is slow, fumbling, and inadequate. . . .

"To exist in full effectiveness, family life must have permanence. This permanence depends chiefly upon the permanence of marriage. Strictly requisite is marriage that is monogamous and indissoluble; the marriage of one man and one woman in divorceless union that is broken only by the death of one of the spouses. . . .

"Further, family life must have freedom. There must be no undue intervening of the civil power in the domain of husband and wife. This requirement involves two points of obligation. Freedom implies that rights be respected. The State must respect the rights of the family. It must not therefore fail to provide opportunities for the adequate housing of families, for the requisite schooling of children, for the use of common benefits supplied through the taxing of citizens. On the other hand, the State must not oppress the family. It must not discount parental authority by invading the home and legislating upon matters which are of strictly domestic concern. It must be neither arbitrary nor tyrannous. It must not usurp the right which belongs to parents of educating their children. On this score, the part of the State is to furnish opportunity for schooling, and to see that parents are not recreant in making use of the opportunity on behalf of their children. The State cannot force a child to attend this school or that; it cannot prescribe courses of study that may involve intellectual or moral dangers for pupils. Nor can the State make discrimination among families, distributing common benefits to some and withholding them from others.

"To the Church belongs the preeminent right to guide the child's spiritual and moral formation; to the parents belongs the natural right to govern and supervise the child's nurture and general education; in society is vested the right to transmit, generally by means of schools, the cultural heritage of successive generations.

"The function of the State is to assist these three agencies to discharge harmoniously their responsibilities in the best interests of the public welfare. The State must ever keep in mind that children belong to their parents before they belong to the State; the resources to develop them into their full stature as human beings destined for eternal union with God are not the property of political government; these constitute the treasury of families and the Church.

"Again, the family, to exercise its good influence in full effectiveness, needs a just measure of economic security. When, in a wealthy and prosperous nation, diligent and willing parents are forced to live in grinding poverty; when parents have no opportunity of owning their own home; when the aid of government is extended to those who raise crops or build machines but not to those

who rear children, there exists a condition of inequity and even of injustice. Social legislation and social action must concur to improve man's economic opportunity, to enable him to marry early, to free him from the peril of unnaturally limiting his family, and to afford him some certainty of sufficiently gainful employment and some assurance that death or accident will not reduce his dependents to the status of public charges.

"Finally, the family needs religion. It requires the high morality and the unvarying standards of duty which only the spirit of religion can supply to family life. It needs the strong quality of staunch loyalty to God and to His commandments, to His Church and her precepts. It needs the filial piety which has its source and support in piety toward God."

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STATEMENT OF THE HIERARCHY ON PALESTINE

The Hierarchy of the United States at its November meeting voiced disapproval of the present United Nations plan for the internationalization of Jerusalem and its environs, arguing that the plan by no means achieves internationalization, though it pretends to do so. They reiterated the Pope's contention to the effect that the only effective plan is the territorial internationalization under the sovereignty and the effective control of the family of nations.

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TERMS FOR PEACE WITH COMMUNISM

An article entitled "The Vatican's Conditions for Peace with Communism" in the October issue of *L'Osservatore Romano*, afforded its editor, Count Giuseppe Dalla Torre, an opportunity of stating with clarifying definiteness the terms on which political communism can hope for peaceful interrelations with members of the Catholic Church, lay and cleric, in the countries in which it is struggling to establish itself. The article stated that the conditions for the birth of these peaceful relations are neither more nor less than those requisite in the case of other political systems under which there exists separation between Church and State, i. e., the guarantee of the civil and economic rights which are the basis for all private and public activities of any organization, in addition to the following: 1) freedom of worship and freedom in the adminis-

tration of the Sacraments; 2) freedom of evangelization or proselytism; 3) freedom in religious administration, i. e., in the appointment of pastors and bishops and in the intercommunication between all ranks of the hierarchy and between the hierarchy and the laity; 4) freedom in the giving of religious instruction and in the conducting of Christian schools; 5) freedom in the use of the means of disseminating the faith and of defending and affirming the thought and the mission of Catholicism before public opinion, i. e., freedom of Catholic speech, of the Catholic press, and of Catholic action.

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PAPAL CONDEMNATION OF ARTIFICIAL INSEMINATION

This condemnation was made by our Holy Father in an address to five hundred Catholic doctors, representing thirty countries, who had arrived at a similar resolution in their own discussions. The Pope insisted further that the impediment of impotence is not removed by the fact that artificial insemination makes conception possible.

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PAPAL COUNSEL TO JURISTS

On November 7, our Holy Father addressed a group of Catholic jurists and laid down four norms for the guidance of judges in lands that have rejected the laws of Christian morality. He pointed out, first, that a judge who passes sentence in accordance with an unjust law shares in the guilt of the legislator, v. g., in a sentence pronounced on a parent who violated a law forbidding the religious instruction of children. He insisted, further, that under no condition may a judge sentence anyone to perform an act that is intrinsically immoral, v. g., in a sentence that would compel a physician to kill an imbecile under a law requiring the death of imbeciles. He averred that a judge may not expressly acknowledge or approve an immoral law, a law that is for that reason invalid, v. g., by commending it from the bench in pronouncing sentence or in rendering his decision. He conceded that the application of an unjust law is permissible but only to avoid greater evils, to preserve an honest

judiciary, and to avoid worse consequences for the Church and its members, but never to the extent of the imposition of the sentence of death. It is under this permissible conduct that a judge may declare that so far as the civil law is concerned husband and wife are no longer to be regarded as such; of course, to do so he must be aware that proportionate reasons justify his action, i. e., reasons of equal weight with the evil consequences of divorce.

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TRINATION IN POLAND

The Primate Archbishop of Poland has received special administrative powers including the authority to permit priests to celebrate three Masses on Sundays and holy days, and even on weekdays, if necessary, and this owing to the obstacles with which religion is confronted in that country.

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SUPREMA SACRA CONGREGATIO S. OFFICII

I

DUBIUM¹

DE CELEBRATIONE MATRIMONII INTER ACATHOLICOS

Proposito Supremae huic S. Congregationi dubio:

Utrum praescriptum can. 1088 § 1 applicetur etiam matrimoniis acatholicorum baptizatorum;

Feria IV, die 18 Maii 1949

Eñi ac Revñi DD. Cardinales rebus fidei et morum tutandis praepositi, prae habito RR. DD. Consultorum voto, respondendum decreverunt:

Affirmative.

Et die 26 Iunii eiusdem anni Ssñus D. N. D. Pius divina Providentia Papa XII, in Audientia Adessori S. Officii impertita, relata sibi Eñorum Patrum resolutionem adprobavit et publicari iussit.

Datum Romae, ex Aedibus S. Officii die 30 Iunii 1949.

Petrus Vigorita, *Supr. S. C. S. Officii Notarius.*

¹ AAS, XLI (1949), 427.

II

DECLARATIO ²

DE COMMUNISTARUM MATRIMONII CELEBRATIONE

Quaesitum est utrum exclusio communistarum ab usu Sacramentorum in Decreto S. Officii diei 1 Iulii 1949 statuta, secum ferat etiam exclusionem a celebrando matrimonio: et quatenus negative, an communistarum matrimonia regantur praescriptis canonum 1060-1061.

Ad rem Sacra Congregatio S. Officii declarat: Attenta speciali natura sacramenti matrimonii, cuius ministri sunt ipsi contrahentes et in quo sacerdos fungitur munere testis ex officio, sacerdos assistere potest matrimoniis communistarum ad normam canonum 1065, 1066.

In matrimoniis vero eorum, de quibus agit n. 4 praefati Decreti, servanda erunt praescripta canonum 1061, 1102. 1109 § 3.

Datum ex Aedibus S. Officii die 11 Augusti 1949.

Marinus Marani, *Supr. S. C. S. Officii Substitutus Notarius.*

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SACRA CONGREGATIO PRO ECCLESIA ORIENTALI

DECRETUM ³

CIRCA FACULTATES DE MISSIS MODERANDIS

Cum extraordinaria rerum adiuncta cessaverint ob quae praescriptis de Missarum moderatione interdum fuit derogatum, Sacra Congregatio pro Ecclesia Orientali, speciali Ssmi Domini Nostri Pii, Divina Providentia Pp. XII, mandato obsequens, omnibus propriae iurisdictioni obnoxiiis declarat facultates omnes de Missis moderandis, a quacumque Auctoritate, quovis modo, etiam vivae vocis Oraculo, et ad quodcumque tempus concessas sive Ordinariis quibuscumque sive Superioribus Religiosis sive quibusvis aliis personis physicis vel moralibus, abeunte a. 1949, tamquam revocatas ac nullius roboris habendas esse.

Quare posthac in singulis casibus ad Sanctam Sedem recurrendum erit.

² AAS, XLI (1949), 427, 428.

³ AAS, XLI (1949), 373.

Contrariis quibuscumque minime obstantibus.

Datum Romae, ex Aedibus Sacrae Congregationis pro Ecclesia Orientali, die xxx m. Iunii a. MCMXLIX.

✠ E. Card. TISSERANT, Ep. Portuensis et S. Rufinae, *a Secretis*
L. ✠ S.

† V. Valeri, Archiep. tit. Ephesinus, *Adessor.*

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SACRA CONGREGATIO CONCILII

DECRETUM ⁴

CIRCA FACULTATES DE MISSIS MODERANDIS

Cum extraordinaria rerum adiuncta cessaverint ob quae praescriptis Codicis Iuris Canonici interdum fuit derogatum, Sacra Congregatio Concilii, post collata consilia cum Ss. Congregationibus de Religiosis et de Propaganda Fide, speciali Ss^{mi} Domini Nostri Pii Divina Providentia Pp. XII mandato obsequens, decretum, diei 1 Augusti 1941, n. 3165/41 confirmat, simul declarans facultates omnes de Missis moderandis,—praeter sic dictas “quinquennales” Ordinariis datas,—a quacumque Auctoritate, quovis modo, etiam “vivae vocis Oraculo” et ad quodvis tempus concessas sive Ordinariis quibuslibet, sive Superioribus Religiosis sive quibusvis aliis personis physicis vel moralibus, tamquam revocatas ac nullius roboris, abeunte anno 1949, habendas esse.

Quare posthac ad normam Codicis Iuris Canonici (cfr. can. 1517 § 1 et 1551 § 1) in singulis casibus ad Sanctam Sedem recurrendum erit.

Contrariis quibuscumque non obstantibus.

Datum Romae, die xxx Iunii MCMXLIX.

F. Card. MARMAGGI, *Praefectus*

L. ✠ S.

F. Roberti, *a Secretis.*

⁴ AAS, XLI (1949), 374.

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CONSTITUTIONES APOSTOLICAE

I⁵

INDULGENTIAE ET FACULTATES SUSPENDUNTUR VERTENTE ANNO
GENERALIS MAXIMIQUE IUBILAEI MILLESIMO NONGENTE-
SIMO QUINQUAGESIMO

PIUS EPISCOPUS

SERVUS SERVORUM DEI
AD PERPETUAM REI MEMORIAM

Fore confidimus ut proximum Iubilaeum maximum, quod haud ita pridem indiximus, cum singulis christifidelibus, tum humanae societati fructus afferat uberrimos. Nobis enim dabitur — ut in optatis est — ingentes christianorum multitudines cernere, quae Romam undique gentium confluent, ut principem Catholicae Ecclesiae Sedem ac Iesu Christi Vicarium revereantur, ut praeclara religionis monumenta pie invisentes suam fidem alant ac refoveant, ut denique sua admissa expient et ad virtutem optimosque redintegrandos mores una simul exardescant.

Ac futurum quoque speramus ut mirandum hoc fraternae unitatis caritatisque spectaculum — dum odium haud paucos homines miserandum in modum disiungit atque exagitat — facere non possit quin eos etiam, qui catholico non censentur nomine, salutariter percellat atque commoveat.

Ut autem quam plurimi, divinae gratiae munera impetraturi, ad aliam hanc Urbem per anni sacri decursum conveniant, quod Decessor Noster Sixtus IV anno MCCCCLXXIII decrevit, id ipsum Nos per has Litteras statuere censemus, prudenti tamen temperatione modoque adhibito, quemadmodum infra indicaturi sumus: hoc est promulgata atque ad rem deducta Iubilaei indulgentia, iam ceteras omnes poenarum relaxationes, aut concessas, aut concedendas, itemque facultates cuivis factas, extra Urbem, Apostolicae Sedis nomine atque auctoritate dispensandi absolvendique in utroque foro, per piacularem annum conquiescere atque intermitteri iubemus.

Itaque, auctoritate Nostra apostolica, usitatas pro vivis indulgentias, ut decessores Nostri simili in causa decreverunt, sic Nosmet per totum Anni Sancti decursum ubique — in Ecclesia etiam Orien-

⁵ AAS, XLI (1949), 337-339.

tali—intermitti suspendique decernimus; itemque facultates Nostro nomine extra Urbem exercendas intermittimus atque suspendimus, iis tamen in utraque re exceptis, quas mox enumeraturi sumus.

Etenim ex indulgentiis, quae pro vivis concessae sunt, has, quae sequuntur, integras atque immutatas permanere volumus:

I. Indulgentias *in articulo mortis* lucrandas.

II. Eam, qua frui omnibus licet, qui cum primo diluculo, tum meridiano tempore, tum sub vesperam, vel cum primum postea potuerint, precationem “Angelus Domini”, vel, pro temporis ratione “Regina caeli”, vel, si neutrum fieri potest, quinque *Salutationem Anglicam* “Ave Maria” recitaverint.

III. Indulgentias iis tributas qui pie templa inviserint, ubi Sacramentum augustum *quadraginta horarum* spatio adorandum proponitur.

IV. Indulgentias, quas eos lucrari decretum est, qui Sacramentum augustum, cum ad aegrotos deferitur, comitentur, aut facem vel cereum per alios ferendum ea occasione mittant.

V. Indulgentiam, toties quoties lucrandam, iis concessam, qui sacellum Portiunculae in templo S. Mariae Angelorum, prope Asisium, pietatis causa, adierint.

VI. Indulgentias iis concessas, qui precem recitaverint a Nobismet ipsis compositam pro Anno Sancto MDCCCCL.

VII. Indulgentias, quas S. R. E. Cardinales, Apostolicae Sedis Nuntii, vel Internuntii, ac Delegati Apostolici, itemque Archiepiscopi, Episcopi, Abbates vel Praelati nullius, Vicarii et Praefecti Apostolici in usu Pontificalium aut impertienda benedictione aliave forma usitata largiri solent.

Ceteras omnes indulgentias plenarias et partiales, aut ab Apostolica Sede directe concessas, aut ab aliis quoquo pacto concessas concedendasque ex facultate iure ipso vel peculiari indulto sibi facta, decernimus, per totum Annum Sanctum, nusquam terrarum vivis prodesse, sed tantummodo vita functis. Praesentium interea auctoritate Litterarum praecipimus ac mandamus, ut, praeter indulgentias Iubilaei easque, quas superius singillatim excepiimus, nullae praeterea aliae uspiam, sub paena excommunicationis ipso facto incurrendae aliisque paenis arbitrio Ordinariorum infligendis, quomodocumque publicentur.

Ad illud idem propositum, ad quod indulgentiarum intermissio spectat, facultates et indulta absolvendi etiam a casibus Nobis et

Apostolicae Sedi reservatis, relaxandi censuras, dispensandi a votis eademque commutandi, dispensandi praeterea ab irregularitatibus et impedimentis, cuilibet quoquo modo concessa, extra Urbem eiusque suburbium, per Iubilaei Maximi decursum, suspendimus nullique suffragari volumus.

Haec tamen per exceptionem decernimus:

I. Ratae sint facultates omnes per Codicem iuris canonici quovis modo concessae.

II. Ratae item firmaeque sunt facultates pro foro externo ab Apostolica Sede tum Nuntiis, Internuntiis et Delegatis Apostolicis factae, tum Ordinariis locorum, Antistitibus religiosorum Ordinum atque Superioribus Religiosarum Congregationum maioribus quoquo modo in subditos suos tributae.

III. Quas denique facultates S. Paenitentiaria Nostra impertire solet Ordinariis aut confessariis pro foro interno, easdem ne extra Urbem quidem suspendimus, sed ita ut erga eos dumtaxat paenitentes exerceantur, qui, quo tempore confessionem peragunt, iudicio Ordinarii aut confessarii nequeant sine gravi incommodo Urbem adire.

Quaecumque autem his Litteris decreta continentur, ea omnia stabilia, rata, valida esse volumus et iubemus, contrariis non obstantibus quibuslibet.

Earum vero exemplis aut excerptis, etiam impressis, notarii publici cuiusvis manu subscriptis ac sigillo alicuius in ecclesiastica dignitate constituti munitis, eandem volumus haberi fidem, quae haberetur praesentibus si essent exhibitae vel ostensae.

Nulli igitur liceat hanc paginam Nostrae suspensionis, declarationis, voluntatis infringere vel ei, ausu temerario, contra ire; si quis autem hoc attentare praesumpserit, indignationem omnipotentis Dei ac beatorum Apostolorum Petri et Pauli se noverit incursurum.

Datum Romae apud Sanctum Petrum, die decima mensis Iulii, anno Domini millesimo nongentesimo quadragésimo nono, Pontificatus Nostri undecimo.

PIUS PP. XII

III ⁶

INDULGENTIAE ANNI SANCTI MDCCCCL CONCEDUNTUR MONIALIBUS
ALIISQUE STABILI IMPEDIMENTO DETENTIS CUM OPPORTUNIS
FACULTATIBUS CIRCA ABSOLUTIONES ET VOTORUM COMMUTATIONES.

PIUS EPISCOPUS

SERVUS SERVORUM DEI
AD PERPETUAM REI MEMORIAM

Iam promulgato maximo generalique Iubilaeo, quod qui ad
almam hanc Urbem convenerint participare poterunt, paternus
animus Noster ad eos se convertit, qui, gravi praepediti impedi-
mento, prohibentur quominus Romanam suscipiant peregrinationem.
Hi sunt non modo qui vitam contemplationi deditam in claustra-
libus saeptis traducunt, sed qui etiam ob senilem aetatem, vel in-
firmam valetudinem itineris incommoda tolerare non possunt; qui
in exilio, in captivitate, in publica custodia detenti, vel alia de
causa, adveniendi libertate non fruuntur; qui denique tam misera
anguntur sorte, ut necessarias impensas facere non valeant.

His etiam cupimus ut facultas ne desit caelestibus utendi largi-
tionibus, quae per proximum piacularem annum assequendae pro-
ponuntur; ita quidem ut christianorum omnium communitati
uberiores pateant impertiendae divinae gratiae latices. Ac futurum
confidimus ut eorum preces, qui ex suscepto vitae instituto vir-
ginalem innocentiam colunt, eorumque piacula expiationesque, qui
in aerumnosis miserisque versantur condicionibus, non modo sibi,
sed Ecclesiae etiam, universaeque hominum societati a miseri-
cordissimo Deo feliciora tempora impetrent.

Huius vero concessionis Nostrae hi dumtaxat, qui sequuntur,
participes sunt:

I. In primis Moniales omnes, quae in coenobiis degunt sub
claustri perpetui disciplina; item quae in iisdem monasteriis aut
probandae et postulantes sunt aut tirocinium exercent aut educa-
tionis aliave legitima de cause, etsi per maiorem tantummodo anni
partem, commorantur. Neque excipi volumus mulieres earum con-
tubernales, quae famulatus vel stipis colligendae gratia, saepta re-
ligiosa egrediuntur.

⁶ AAS, XLI (1949), 345-349.

II. Omnes religiosas Sorores, scilicet votorum simplicium, quae ad Congregationem pertineant iuris sive pontificii sive dioecesani, quamquam severiore claustrum lege non adstringuntur, una cum suis novitiis, probandis, atque educandis puellis—semi-convitricibus quoque, ut aiunt, non tamen externis—, aliisque communi cum ipsis mensa utentibus, domicilio vel quasi domicilio.

III. Pariter Oblatae, seu piae feminae, vitae societate coniunctae, etiamsi vota non emittant, quarum tamen Instituta ab ecclesiastica auctoritate vel ratione stabili vel ad experimentum probata sint, una cum suis novitiis, probandis, puellis educandis aliisque communi cum ipsis contubernio utentibus, ut de Congregationibus religiosis n. II diximus.

IV. Omnes feminae ad quemvis Tertium Ordinem Regularem pertinentes, quae sub uno eodemque tecto, cum approbatione ecclesiastica, communiter vivunt, itemque, ut supra, omnes earum contubernales.

V. Puellae et mulieres in gynaeceis seu Conservatoriis degentes, quamvis non sint Monialibus, Sororibus religiosis, Oblatis Tertiariisve concreditae.

VI. Anachoretae et Eremitae, non ii quidem, qui nullis adstricti clausurae legibus vel communiter vel solitarii sub Ordinariorum regimine certisque legibus obtemperantes vivunt; sed ii, qui in continua—licet non omnino perpetua—clausura et solitudine deditam contemplationi vitam agunt et monasticum aut regularem Ordinem profitentur, ut Cistercienses Reformati B. M. V. de Trappa, Eremitae Camaldulenses et Carthusiani.

VII. Christifideles utriusque sexus, qui captivi in hostium potestate versantur, aut in carcere custodiuntur, aut exsilii paenas deportationisve luunt, aut apud paenales domos ad opus damnati reperiuntur, aut denique in correctionis domibus versantur; itemque ecclesiastici vel religiosi viri, qui in coenobiis aliisve domibus, emendationis gratia, detinentur.

VIII. Christifideles utriusque sexus, qui in illis Nationibus commorantur, in quibus ob peculiaria rerum adiuncta non licet Romanam suscipere peregrinationem.

IX. Christifideles utriusque sexus, qui morbo vel imbecilla valetudine prohibentur, quominus, intra Iubilaei annum, aut Urbem adeant aut in Urbe praescriptas Patriarchalium Basilicarum visi-

tationes instituant, qui in nosocomiis, conducti vel sponte ipsi sua, aegrotantibus, continuatâ operâ, adsunt; qui corrigendorum emendationi ac regimini praeponuntur; itemque operarii, qui, cotidiano sibi victum labore comparantes, nequeunt se ab eo per tot horas abstinere; senes denique, qui septuagesimum aetatis suae annum excesserint.

Hos omnes et singulos monemus hortamurque ut admissa cuiusque sua dolenti animo perscrutantes, eadem per Paenitentiae Sacramentum eluant ac renovato spiritu ad perfectioris vitae institutum citatiore gradu contendant; mox Angelorum Pane ea, qua decet, pietate reficiantur, indeque vires sumant ad proposita sancte suscepta religiosissime exsequenda; denique ad mentem Nostram—hoc est pro Ecclesiae Catholicae incremento, pro extirpandis erroribus, pro Principum concordia totiusque humanae consortionis tranquillitate et pace—orare ne praetermittant.

Visitationi autem quatuor Urbis Basilicarum alia religionis, pietatis caritatisque opera iidem sufficiant, quae Ordnarius per se ipse vel per prudentes confessarios, pro condicione et valetudine singulorum ac pro loci temporisque rationibus, iniunxerit.

Itaque omnipotentis Dei misericordia et beatorum Apostolorum Petri et Pauli auctoritate confisi, iis omnibus et singulis, quos supra memoravimus, vere paenitentibus et intra Annum Sanctum rite confessis ac sacra synaxi refectis, Deumque, ut supra diximus, ad mentem Nostram orantibus, omnia denique implentibus alia iniungenda opera in locum visitationum, ac, vel inchoatis tantum iisdem operibus si morbus periculosus oppresserit, plenissimam totius paenae, quam pro peccatis luere debent, indulgentiam, rite tamen obtenta per Paenitentiae Sacramentum remissione ac venia, haud secus ac si praescripta communiter ceteris omnibus explevissent, de Apostolicae liberalitatis amplitudine largimur atque concedimus; quam quidem indulgentiam toties intra Anni Sancti decursum lucrari possunt, quoties iniuncta opera iteraverint.

Porro liceat unicuique eorum, quos supra memoravimus, sibi confessarium eligere a suo Ordinario ad praescripta Codicis approbatum, cui, vi praesentis Constitutionis, pro confessione dumtaxat ad lucrandum Iubilaeum instituta, concedimus, ut, sine detrimento earum facultatum, quas forte alio titulo exercere possit, personas supra dictas in foro sacramentali tantum absolvere queat a qui-

busvis censuris et peccatis etiam speciali modo a iure Apostolicae Sedi reservatis, aut Ordinario reservatis, excepto casu haeresis formalis et externae, impositis salutari paenitentia aliisque secundum canonicas sanctiones rectaeque disciplinae regulas iniungendis. Praeterea confessario, quem monialis sibi elegerit, potestatem facimus dispensandi a votis privatis quibusbet, quae ea ipsa post professionem sollemnem nuncupaverit quaeque regulari observantiae minime adversentur. Confessarios autem supra memoratos volumus quoque commutare posse omnia vota privata, etiam iurata, quibus Sorores in Congregatione votorum simplicium, Oblatae, Tertiariae regulares, puellae et mulieres communibus domibus vitam agentes, sese obstrinxerint, iis votis exceptis quae Apostolicae Sedi reservata sint, et iis, quorum aut dispensatio vergeret in detrimentum tertii aut commutatio minus arceret a peccato quam ipsum votum.

Hortamur autem venerabiles fratres Episcopos aliosque locorum Ordinarios, ut, ad apostolicae Nostrae benignitatis exemplum, eligendis ad praesentium effectum confessariis impertiri ne recusent facultatem absolvendi a casibus qui ab ipsis Ordinariis reservati sint.

Harum interea decreta et iussa Litterarum rata, valida, firma in omnes partes esse et fore decernimus, contrariis non obstantibus quibusbet. Volumus denique ut harum Litterarum exemplis vel excerptis, etiam impressis, manu alicuius notarii publici subscriptis et sigillo viri in ecclesiastica dignitate constituti munitis, eadem prorsus adiungatur fides, quae ipsis praesentibus adhiberetur, si forent exhibitae vel ostensae.

Nulli igitur hominum liceat paginam hanc Nostrae declarationis, concessionis, derogationis et voluntatis infringere vel ei ausu temerario contra ire; si quis autem hoc attentare praesumpserit, indignationem omnipotentis Dei ac beatorum Apostolorum Petri et Pauli se noverit incursum.

Datum Romae apud Sanctum Petrum, die decima mensis Iulii, anno Domini millesimo nongentesimo quadragesimo nono, Pontificatus Nostri undecimo.

PIUS PP. XII

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FACULTATES

CONFESSARIIS PEREGRINIS CONCESSAE ANNO VERTENTE GENERALIS
MAXIMIQUE IUBILAEI MDCCCCL.

I⁷

Facultates speciales quae tribuuntur omnibus Confessariis peregrinis qui iam in sua Dioecesi rite approbati sint pro utroque sexu, quibusque pro foro conscientiae et in sacramentali confessione tantum uti valeant:

1. Absolvendi quaslibet personas sibi confitentes a quibusvis peccatis et censuris a iure reservatis aut Ordinario, aut, etiam speciali modo, Romano Pontifici, *dummodo censurae publicae non sint*; iniunctis salutaribus paenitentiis atque aliis de iure iniungendis.

Ne absolvant igitur, nisi in adiunctis atque ad praescriptum can. 2254 Codicis iuris canonici, eos, qui irretiti sint aliqua censura vel Romano Pontifici personaliter, vel specialissimo modo Apostolicae Sedi reservata. Ne absolvant pariter illos, qui in censuram inciderint, de qua in can. 2388, § 1, Sanctae Sedi reservatam ad normam Decreti "Lex sacri coelibatus" per Sacram Paenitentiarium Apostolicam editi die XVIII mensis Aprilis anni MDCCCXXXVI (cfr. *Acta Apost. Sedis*, vol. XXVIII, p. 242), itemque ad normam Declarationis ab eadem Sacra Paenitentiarium datae die IV mensis Maii anni MDCCCXXXVII (cfr. *Acta Apost. Sedis*, vol. XXIX, p. 283); vi cuius Decreti et Declarationis haec censura in casu speciali, de quo agitur, ita Sacrae Paenitentiarium reservatur, ut nemo unquam, excepto periculo mortis, ab ea absolvere possit, ne vi quidem can. 2254.

2. Commutandi in alia pia opera, ex iusta causa, omnia et singula *vota privata*, etiam iurata, exceptis iis votis privatis quae can. 1309 Apostolicae Sedi reservantur; itemque exceptis iis quorum commutatio vergeret in detrimentum tertii, aut commutatio minus arceret a peccato quam ipsum votum.

3. Concedendi dispensationem visitationis alicuius Basilicae eam commutando in visitationem, si fieri potest, alius ecclesiae, immo etiam visitationum numerum imminuendi. Quos vero recte a visitationibus dispensaverint, iis ne indulgeant, ut preces ad

⁷ AAS, XLI (1949), 518.

mentem Summi Pontificis fundendas, quae a visitatione separari quidem possunt, praetermittant. In commodum tantum aegrotantium eas liceat imminuere.

II⁸

Facultates speciales quae Decem Confessariis peregrinis, ab hac S. Paenitentiaria, vel ab Episcopo proprio selectis, tribuuntur ad confessiones sociorum peregrinorum accipiendas, quibusque pro foro conscientiae et in sacramentali confessione tantum uti valeant:

1. Absolvendi non solum a censuris et excessibus occultis, prout statuitur sub n. I, 1, pro omnibus confessariis peregrinis, sed etiam a censuris *quae sint publicae* in locis ubi commorati sunt paenitentes vel ibi nominatim declaratae sint aut quamvis delictum ad iudicem fori externi iam fuerit deductum, dummodo sint sincere parati quodvis mandatum demisse accipere fideliterque adimplere et scandalum reparare. Huius tamen censurae absolutio in foro externo non suffragabitur. Ne absolvant tamen, nisi ad tramitem can. 2254, praelatos cleri saecularis ordinaria iurisdictione praeditos, superioresque maiores religionis exemptae, qui in censuras *speciali modo* Romano Pontifici reservatas *publice* inciderint.

2. Dispensandi constitutos in Sacris, ad Ordines tantum exercendos, ab irregularitatibus ex delicto occulto, non exclusa irregularitate de qua in can. 985, 4°.

3. Dispensandi circa visitationes quatuor Basilicarum, easque item commutandi eodem modo ac ceteris confessariis conceditur sub n. I, 3.

4. Commutandi in alia pia opera, ex iusta causa, omnia ac singula *vota privata*, iurata quoque et etiam Sedi Apostolicae reservata. Similiter possint commutare votum castitatis perpetuae ac perfectae, etsi fuerit ab origine *publice* emissum in professione religiosa etiam solemniter et firmum manserit, aliis huius professionis votis relaxatis. Nullatenus tamen ab eodem illos dispensare possint qui vi Ordinis Sacri ad legem coelibatus tenentur, etiamsi ad statum laicalem redacti sint. A commutatione votorum se abstineant si commutatio tertio praeiudicium afferat ac minus arceat a peccato quam ipsa commutatio.

⁸ AAS, XLI (1949), 519.

5. Dispensandi ab occulto impedimento consanguinitatis in tertio vel secundo gradu collateralis, etiam attingente primum, quod ex generatione illicita proveniat, solummodo ad matrimonium convalidandum, non vero ad contrahendum vel sanandum in radice.

6. Dispensandi ab occulto criminis impedimento, neutro machinante, sive agatur de matrimonio contracto sive de contrahendo, iniuncta, in primo casu, privata renovatione consensus, secundum can. 1135; imposita, in utroque, gravi ac diuturna paenitentia salutari.

MONITA

DE USU FACULTATUM CONFESSARIIS PEREGRINIS TRIBUTARUM

1. His facultatibus specialibus confessarii peregrini ubicumque in Urbe et suburbio, servatis can. 908-910 et de consensu rectorum ecclesiarum, cum sociis peregrinis uti poterunt, ita tamen ut eas valide exercere valeant si unus vel alter peregrinus non socius, cum peregrinis sociis, ad ipsos confitendi causa accedat.

2. Item his facultatibus tantummodo uti poterunt erga paenitentes qui ad confitendum accedant *ea mente et sincera voluntate* ut Iubilaei veniam consequantur; attamen si paenitens, mutato proposito, ab acquirenda indulgentia Iubilaei destiterit atque cetera opera imperata intermiserit, omnes absolutiones censurarum, si eas excipias quae ad reincidentiam datae sint, itemque commutationes et dispensationes concessae in suo robore permaneant.

3. Similiter his facultatibus absolvendi a peccatis et censuris reservatis itemque dispensandi ab irregularitatibus nonnisi *semel* cum eodem paenitente uti poterunt, cum ipse scilicet Iubilaei veniam primum lucretur et tum solummodo cum paenitens iam ab alio confessario, facultatem habente per anni sancti decursum, a peccatis et censuris non fuerit absolutus vel ab irregularitate iam dispensationem non obtinuerit. Ceteras vero facultates—eam etiam visitationes contrahendi aut commutandi ad datam normam sub n. I, 3—in favorem etiam eiusdem paenitentis semper exercere poterunt.

4. Firmae et immutatae remaneant facultates quas omnes confessarii peregrini per S. Paenitentiarium vel alio legitimo modo consecuti sunt vel consequentur.

5. Haereticos et schismaticos qui fuerint publice dogmatizantes ne absolvant nisi ii, praeter haeresis et schismatis abiurationem,

saltem coram ipso confessario factam, scandalum, ut par est, repara-verint. Ne absolvant praeterea eos qui in rerum adiunctis versantur, de quibus agitur in Decreto Supremae Sacrae Congregationis Sancti Officii, die 1 mensis Iulii anni MDCCCXXXIX edito, de Communismo (cfr. *Acta Apost. Sedis*, vol XXXXI, pag. 334), nisi eodem modo, uti supra, resipuerint.

6. Ne absolvant eos qui sectis vetitis, massonicis aliisve id genus, nomen dederint, etiamsi occulti sint, nisi, abiurata, saltem coram ipso confessario, secta, scandalum reparaverint et a quavis activa cooperatione vel favore suae cuiusque sectae praestando cessaverint; nisi ecclesiasticos et religiosos, quos sectae adscriptos noverint, ad can. 2336, § 2, denuntiaverint; nisi libros, manu scripta et signa, quae eandem sectam respiciant, quotiescumque adhuc retineant, absolventi tradiderint aut se ea tradituros vel destructuros serio promiserint, imposita, pro modo culparum, gravi paenitentia salutari.

7. A lectione librorum prohibitorum ne quemquam absolvant, nisi is libros, quos penes se retinet, Ordinario aut confessario tradiderit aut se eos traditurum vel destructurum serio promiserit.

8. Si quis in occultas censuras ob partem quoquo modo laesam inciderit, eum ne ante absolvant, quam parti laesae, etiam scandalum reparando damnumque sarciendo, satisfecerit: aut saltem, si eiusmodi satisfactionem praestare ante non possit, vere graviterque promiserit se, sum primum licuerit, satisfacturum.

9. Si de casu agatur, etiamsi occulto, de quo ad can. 2342, prohibeant, sub poena reincidentiae, quominus in posterum accedant ad religiosam domum illam eiusque ecclesiam.

10. Eos, qui bona vel iura ecclesiastica sine venia acquisiverint, ne absolvant nisi aut iis restitutis aut compositione quamprimum a competente auctoritate postulata, aut promissione sincere facta eandem postulandi, nisi agatur de locis, in quibus a Sede Apostolica aliter iam provisum fuerit.

11. Non praeterrmittant suam cuique paenitenti salutarem paenitentiam sacramentalem imponere, etiamsi sibi coniicere iure liceat paenitentem plenissimam Iubilaei veniam esse consecuturum.

12. Confessio et Communio ad lucrandam Iubilaei indulgentiam nihil refert utrum visitationibus quatuor Basilicarum antecedant, interponantur vel succedant; unum necesse est ut postremum ex praescriptis opus, quod etiam Communio esse potest, in statu

gratiae, ad can. 925, § 1, compleatur. Ab obligatione praescriptae confessionis neminem exsolvant; neque fas est, Communionem in alia pia opera commutare, nisi agatur de aegrotis.

13. Visitationem Basilicarum ne commutent in alia opera, quae ad peragenda paenitens sit alio obligationis propriae dictae titulo adstrictus; et sciant se conscientiam oneratos si inconsulto aut sine iusta causa paenitentem ex eiusmodi visitationibus exemerint.

Datum Romae, ex aedibus Sacrae Paenitentiariae, die XVII mensis Septembris, anno MDCCCCXXXIX.

N. Card. CANALI, *Paenitentarius Maior*.

L. ✠ S.

S. Luzio, *Regens*.

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PROGRAM OF RELIGIOUS EDUCATION IN PHILADELPHIA

There has been initiated in the Archdiocese of Philadelphia a program of religious education of children in public schools for more than 46,000 Catholic children in 396 parishes in a ten-county area in southeastern Pennsylvania. It consists of a weekly schedule of two hours of religious instruction for grade school pupils after school hours and off school property. Catholic teachers and graduates of Catholic high schools and colleges are enrolled in the program. Each parish has also been enlisted in a plan of adult education through the organization of adult discussion clubs which will meet in private homes to give members an intelligent and speaking knowledge of their faith.

SECULAR

U. N. INQUIRY INTO SATELLITE TREATY INFRINGEMENT

By an overwhelming majority and in the face of bitter protests made by the Soviet Union and her satellite nations, the United Nations General Assembly approved a resolution expressing mounting concern at the grave accusation made against Bulgaria, Hun-

gary, and Romania averring violation of pledges for the protection of basic human rights made in their peace treaties, the violation consisting in religious and political persecution. The International Court of Justice will be asked to render an advisory opinion whether the three countries are obligated to carry out the treaty provisions for settling the disputes arising from these accusations. Forty-six countries voted in favor of the resolution and five against it. Yugoslavia, Israel and India refrained from voting.

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PROTESTANT EPISCOPAL FAVOR FOR INTERNATIONALIZATION

A resolution of the House of Deputies of the Protestant Episcopal Church asserted that the internationalization of Jerusalem and the adjacent area is the nearest approach to a just recognition of the claims of Moslem, Jew, and Christian, thus concurring with a similar decision made by the Episcopalian House of Bishops and with the Catholic position.

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FORBIDDEN ESTABLISHMENT OF RELIGION

The June 1949 issue of the *Harvard Law Review* presents an article by a Professor of Law at Cornell University, Arthur Sutherland, Jr., under the title "Due Process and Establishment". The reference to "due process" points to the basis provided by the Fourteenth Amendment to the Federal Constitution for the application to the States of the prohibition imposed on Congress, and on Congress only, by the First Amendment to the Federal Constitution. In the article the writer contrasts theory and practice in regard to the principle of the complete severance of religion from education, showing that in spite of the universal lip-service paid to this principle, there is a notable and widespread practice to the contrary. As examples of this practice he specifies Bible-reading required by State statute, the opening of public sessions with prayer offered by a minister, the invocation given by a minister at the graduation exercises of public schools, and the singing of hymns or carols in these schools. If the latter practice, for instance, were challenged judicially, the Supreme Court, he explains, would not, because of the variance between theory and practice, be able to fall back on any

rule-of-thumb theory of the "wall of separation between Church and State", but it would find itself confronted by the habit of the American people of wanting religion in education. It has already declared unconstitutional the giving of religious instruction by privately paid instructors on public property. Would the singing of carols be similarly unconstitutional?

The writer of the article thinks that appropriations under Acts of Congress, which the First Amendment was originally meant to control, are safer from judicial censure than appropriations made by State legislatures. This is owing to the fact that the federal courts have repeatedly ruled that taxpayers have no standing to sue because their contributions are so minute as to be negligible. This places in a position of relative security the federal school lunch program, religious activities in the armed forces, and the GI program of education. To attack these forms of federal aid the plaintiff would need to show not merely the interest of an ordinary taxpayer but a special interest equivalent to his own freedom in the matter of religion.

In his annual report to the American Council on Education, its President, Dr. George F. Zook, departed from his previous opinion that Congress should leave to the individual States the question of the inclusion or the exclusion of non-public school children as beneficiaries of federal aid to education legislation. He said: "Much of the confusion relative to federal aid to education arises over provisions in several of the bills permitting or requiring the states to use a part of the funds for one or more so-called auxiliary services to assist pupils enrolled in both public and private schools. These include funds for the transportation of pupils, non-religious text books, school lunches, and health services.

"Some years ago, the Supreme Court unanimously decided that the use of public funds for the purchase of non-religious text books for pupils in non-public schools was permissible. A few years ago a similar decision was rendered with respect to the use of public funds to pay for the transportation of pupils to private schools as to public schools.

"It is well known that during the recent war, and since, many millions of dollars of federal money have been appropriated for the school-lunch program in both public and private schools. No one doubts that health services should be equally available to both public and non-public schools.

"Hence the solution of this baffling problem with respect to federal aid to education is clearly not so complicated as at first it appears to be. The Congress can and, in my opinion, should make funds available to assist pupils, whether enrolled in public or private schools, in the matter of school lunches, transportation, non-religious text books, and health services."

Aid in this direction was also favored by a resolution adopted by the Executive Committee of the Federal Council of Churches of Christ in America (representing twenty-seven Protestant denominations with a total membership of twenty-seven millions). The resolution said: "By drawing a clear distinction between aid to schools and welfare services for children we believe that necessary assistance can be given to education without making it the object of sectarian controversy or compromising the principle of the separation of Church and State for which the council has always stood." It recommended that a school-aid act should be passed promptly and that then Congress should be concerned with the need of all children of school age for certain welfare services.

A similar tone is discernible in the plank of the New York State Committee of the Liberal Party. The plank read: "We do not consider aid to children's health, including school lunches, a matter of education, but a matter of common right. The fact that schools, whether public or private, act as agents of government aid to health does not make children's health an educational item."

Without making a distinction of this kind, the House of Bishops of the Protestant Episcopal Church has gone on record as opposing the use of federal or State funds for the support of private, parochial, or sectarian schools.

One of the allowable services, permitted in Massachusetts, was challenged in a move of fifteen Protestant ministers of Boston who in July filed an initiative petition with the Attorney General asking that there be placed on the 1950 ballot the question of repealing the State law permitting private and parochial school pupils to ride in public school busses. The move has been countered by the Massachusetts State Republican Committee which has disclosed that it intended to ask the Massachusetts Supreme Court to order such a question omitted from the ballot.

Unlike the Massachusetts law, that of South Dakota, in the opinion of the Attorney General, does not permit school districts to

furnish bus transportation for parochial school children, inasmuch as, in his view, it would "impose additional tax burdens on residents when public schools are available."

The widespread practice of incorporating religious instruction in the public educational program, to which Professor Sutherland adverted, is exemplified not only in the examples he took from federal and State activity but also in the accrediting of religious instruction in State universities and land-grant colleges. The extent to which this policy is characteristic of these universities and colleges was significantly revealed in a report made at the National Conference on Religion in State Universities held at the University of Minnesota. It was there shown that sixty per cent of the more than one hundred of these institutions in America now offer religious instruction on an academic basis, i. e., with credits. Of these, seventeen have chairs of religion financed by State universities, fifteen have independent schools of religion, and more than a dozen others accept for credit the teaching done by denominational pastors. Delegates from twenty-five educational institutions and fifteen religious groups attended the conference. The absence of compulsion in relation to attendance at such religious instruction was regarded as a differentiating factor which might be relied on as justifying the exemption of State colleges and universities from the implications of the Everson and the McCollum decisions. Accredited courses financed by the denominations for instruction of students in the specific doctrines of their faith was favored by the Catholic member of a panel on the method of expanding the role of religion in tax-supported colleges.

An attempt to substitute customary practice rather than the theoretical wall of separation was also latent, it seems, in a resolution of the House of Deputies of the Protestant Episcopal Church supporting released time for religious education in public schools on a voluntary basis also. It was averred in the resolution that this practice would not violate the principle of the separation of Church and State.

In contrast to the voluntary acceptance of religious instruction highlighted in the discussions of the National Conference on Religion in State Universities and in the resolution of the House of Deputies of the Protestant Episcopal Church was the assertion made by Danish Consul T. Schultz to the annual convention in

Montreal of the Atlantic District of the Evangelical United Lutheran Church of America. It was his view, as expressed in the address he made, that it would be a good thing if religious instruction were made a compulsory part of public education. He advocated a policy by which the State would give to every church and faith "of strength" the funds needed for the imparting of this religious education.

Analogous to the challenges thrown down to the use of public funds for auxiliary and health services are those to which Professor Sutherland implicitly adverted when he observed that many practices that are accepted without question may in consequence of the principles of the Everson and the McCollum decisions, eventually reach the Supreme Court of the United States for the determination of their constitutionality. For instance, in Maine a petition reached the Supreme Court before it was dismissed, asking that Bible-reading be banned from the public schools. The petition was introduced by a self-styled atheist who had formerly been a municipal judge. In a similar manner, a Unitarian lawyer who has three children in the public schools has asked the board of education in Avon Lake (Cleveland) to ban the recitation of the Lord's Prayer. A suit similarly motivated has been entered in Passaic, New Jersey, by two members of the United Secularists of America against the local board of education and the New Jersey Board to contest the constitutionality of a New Jersey statute that requires the reading of portions of the Old Testament without comment at the start of the school day in the public schools of the State.

Opposition to activities of this kind was apparent in the charges made by two members of the district school board against teachers in the public schools of Lindrith, New Mexico. The district judge held, however, that it is not illegal or unconstitutional to hold graduation exercises in a church where no religion, strictly speaking, is brought into the program; he held the same to be true also in the case of the recitation of the Lord's Prayer, grace before meals, and prayers said in dismissing a Thanksgiving program. The suit had charged further, however, that Protestant publications had been found in the school during the summer and that the janitor had actually delivered sermons to the children. The judge explained that testimony failed to establish the religious activity of the janitor in this respect or to prove that the printed

material was actually used as a part of the teaching program. The witnesses could not be brought to be specific in offering their testimony in regard to these points. The judge, therefore, refused to rule for the discharge of four teachers against whom the suit was directed, but he enjoined two of them from doing anything to foster the teaching of Protestant religious doctrine.

In the parochial school case in the same State in which the court held that certain Sisters and brothers had taught religion during school hours and were thus disqualified, because of this violation of the law, for teaching in the public schools of the State, the plaintiff was not satisfied with the result because it was not sweeping enough. He has filed an appeal to the Supreme Court of New Mexico in the hope of achieving his objective which was to oust not only a few Sisters and brothers but all Sisters and brothers from the post of teachers in the public schools, as well as to prevent the State from supplying free text books to pupils in parochial schools and to restrain the State from using tax funds for the purpose of transporting parochial school pupils to and from school.

The attack on the occupation by religious of the post of teacher in the public schools has also been attacked in the Fleming school district of the Archdiocese of Denver, where Sisters teach in St. Peter's public school. The attack has taken the form of a suit against county and State education officers to prevent the alleged teaching of religion during school hours. Besides this school in the Archdiocese of Denver, Sisters teach in four elementary and two high schools of the Diocese of Pueblo. As early as 1933, the Attorney General of the State rendered an opinion that Catholic schools could be leased by the State and that qualified Sisters could be hired as teachers.

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SEXUAL EDUCATION IN NEW YORK

The New York State Catholic Welfare Committee has opposed the showing of two films, *Human Growth* and *Human Reproduction*, to school children. The protest was contained in a letter to the State Commissioner of Health, which asserted that no State agency, health or educational, has the right to usurp the prerogatives of parents by indiscriminately disseminating sex education to children in the class room and insisted that the sex education program of

the Commissioners of Health and Education is at variance with traditional Catholic teaching.

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FM RELIGIOUS BROADCASTING

A joint petition of the radio commission of the Southern Baptist Convention and the Executive Board of the Baptist Convention of Texas has asked the Federal Communications Commission to set aside a certain portion of the FM broadcasting band for religious broadcasts.

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ATHEISTIC BROADCASTING

The Federal Communications Commission has refused the demand of an atheist that it revoke the licenses of four San Francisco radio stations because they refused him time for broadcasting his atheistic beliefs. The refusal of the Commission was made public through a letter it wrote to the atheist involved. His complaint was that the stations regularly broadcast religious programs and thus had discriminated against him.

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CANADIAN EXCLUSION OF LITERATURE

Under customs tariff regulations which permit the barring of treasonous, immoral, or indecent publications, Canada, during the past year, refused entry to eighty-one books and twenty-two magazines and reviews.

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CONSTITUTION OF COSTA RICA

The new constitution of Costa Rica reveals the following four characteristics: Catholicism is the State religion; freedom of school and university education is guaranteed; members of the clergy are permitted to be State legislators; and God's Name is included in the constitutional oath. On the other hand, the Constituent Assembly approved an article of the Constitution stipulating that "education is an essential function of the State".

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PHILIPPINE AGE IMPEDIMENT FOR THE POSTULANCY

A Philippine court has ruled that an eighteen-year old girl cannot be admitted to the postulancy of a religious institute in opposition to the wishes of her father, who may effectually prevent it until she has reached the age of twenty-one. On the other hand, a girl of eighteen may marry without her parents' consent.

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FRENCH EJECTMENT OF CHURCH SCHOOLS FROM NATIONALIZED LAND

An adverse verdict has been rendered on the appeal of the Catholic miners in Grand Combe against the ejectment of their church schools from premises declared nationalized when the government took over the mines in Central France. The appeal, brought by a parents' association and by the Christian Brothers, had been pending for two years. A national financial drive is under way to take the schools out of the temporary huts to which they were of necessity transferred.

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AUXILIARY SERVICE IN PRIVATE SCHOOLS OF SWITZERLAND

The Protestant Union of Home Missions and Evangelical Public Welfare of Switzerland has demanded that its parochial schools share in auxiliary services supplied by the government.

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PEOPLE'S PARTY VICTORY IN AUSTRIA

In the Austrian elections held October 9 the People's Party won forty-six per cent of the votes. A month earlier the Hierarchy had declared that the election would determine whether Austria would be controlled by democratic principles with the concomitant freedom of religion or by an anti-Church dictatorship. The Hierarchy had insisted, therefore, that it was mandatory for all believers to vote in order that the dictatorship might not prevail. The communists won only four per cent of the total vote and five seats out of one hundred sixty-five in the lower house of Parliament. The Socialists, however, were only a few per cent behind the

People's Party. But in Vienna the proportion of Socialist voters dropped from fifty-seven and a half per cent in 1945 to forty-nine and four-tenths per cent, while the People's Party gained almost one per cent in Vienna. The latter Party has seventy-seven of the total seats in the lower house. This is not a majority, an advantage lost through the success of the Independent Party, recruited largely from young persons who were not of voting age in 1945 and from former Nazis who were not permitted to vote in 1945. The new Party won half a million votes and sixteen seats. Though the People's Party no longer has a majority of the seats, it remains the deciding factor in Austria's political life as the strongest group in the assembly, and thus is in a position to counteract the efforts of the Socialists, who, in Austria, strive, not for a Christian State, but for a secular and a non-religious one.

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RELIGIOUS DIFFICULTIES IN GERMANY

A history book designed for use in the Red sector of Berlin speaks of Christ as a myth. Red-sector police have been ordered to cease attending church services that have reactionary sermons.

In the Western Zone, though ninety-five per cent of the parents have used the right legally given them to express their desire for the religious instruction of their children (under a law approved by the military government two years ago), practically no religious instruction is given. The chief of education is a Socialist and he is backed by teachers who are either Socialists themselves or are under political pressure. Religious instruction is given in private schools, three of them Catholic.

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HUNGARIAN PARENTS REQUEST RELIGIOUS INSTRUCTION

After nationalizing all church-operated schools during the past year (the great majority of the 5437 schools thus nationalized were Catholic and the rest Protestant), the Hungarian Government announced through the Minister of Education that in accordance with the new constitutional provision requiring the separation of Church and State the Presidential Council had abolished compulsory

religious education in Hungarian schools. Parents who desired religious instruction for their children in the schools were informed that they should notify the school authorities to this effect. Ninety-eight per cent of the parents of Hungary have, in accordance with this notification, expressed their desire for such instruction for their children. In a joint pastoral, the Hungarian Hierarchy thanked Catholic parents for their cooperation.

The new constitution to which the Minister of Education referred in his announcement went into effect in August. It guarantees freedom of conscience and the right to the free exercise of religion.

An effort to counteract the strong desire of parents for the religious instruction of their children has been set in motion by communist youth organizations which have launched a campaign of so-called scientific propaganda in the nationalized schools in an effort to destroy what is designated religious superstition. All crucifixes and sacred pictures have been ordered removed from the schools. In Budapest the removal was made the occasion of so-called "pantheistic" celebrations.

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SATELLITE POLAND

At a public meeting in Poznan held to celebrate "World Peace Day", so-called "Catholic Youth Action groups" adopted a resolution strongly criticizing the policies of the Vatican and the Polish Hierarchy. The resolution proclaimed that "We Catholic youths watch the Vatican's policies with deep sorrow and painful surprise. It is difficult not to observe that the Vatican's attitude toward Western Germany and regarding our frontiers on the Oder and Neisse support the anti-Polish policies of the neo-Hitlerites".

The control of legal machinery was shown to be the concern of the communist regime in a prohibitory decree of the Polish Ministry of Education which forbade the University of Lublin to accept the registration of new students of law. In the same decree an invitation was extended to the professors of law at the University of Lublin to accept posts at the State University, also located in Lublin, which proposed to open a law school last November. The Rector of the University of Lublin is said to have been informed,

however, that no obstacles will be placed in the way of the other two faculties of the University, i. e., those of theology and literature.

A similar motive seems to underlie the order issued to all clerics possessing municipal registers for the period 1890-1945 to turn them over to the bureau of vital statistics. Prior to World War II, the parish priests kept the records of marriages, births and deaths. In most cases only one copy of the record was in the possession of the parish. The clergy are permitted to make a copy of their records but only in the bureau's office.

Control of the mechanism adapted to the promotion of health seems also an objective of the communist authorities. At least they have confiscated fifty Polish hospitals, including those belonging to the Polish Red Cross.

The intimidation of the clergy also proceeds apace. Only recently a Lodz court sentenced two priests to death on charges that they had collaborated with the Gestapo during the German occupation of Poland in betraying other priests who opposed the German authorities and in giving information to the enemy regarding Polish underground activities.

In the light of the foregoing revolutionary activity of the communist regime too much hope should not be derived from the fact that it has entered into an arrangement with the Primate of Poland for the rebuilding of thirty historical Warsaw churches. Certainly one should not see in that arrangement anything more than a gesture towards the feelings of the Polish people at large made with the desire of winning their support.

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ATTEMPT TO ENSLAVE THE CLERGY IN CZECHOSLOVAKIA

The Communists in Czechoslovakia have organized a vast spy system under the direction of the communist "action committees" and the government's schismatic "Catholic Action" with the following objectives: to classify the political attitude of every priest and to list him as "completely progressive", "partly progressive", "conservative", or "reactionary"; to check on which of the priests carry out the Vatican's decree of excommunication; to note what influence the rural deans are exercising on the younger priests; and

to report on the nature of the sermons of the priests as well as on the compliance of the latter with the orders of the Archbishop or the Hierarchy to read pastorals issued by them but forbidden by the government.

This activity is correlative with the attempt to gain control of the clergy through a bill which became effective November 1 and which established a State Office for Church Affairs with the rank of a Cabinet Office. This office was previously in existence but without Cabinet rank. The main purpose of the enlarged office is to insure complete control over all priests and religious. The bill establishing it provides that no ecclesiastic can be appointed to a salaried post unless the government's approval has been first obtained; that all churches must immediately submit detailed inventories; and that all churches must also send in annual budgets for approval. As bait, it makes liberal provision for the support of the clergy and for the defraying of the cost of ecclesiastical administration. It determines that salaries will be paid only to those members of the clergy who are certified as loyal. The disloyal will be subjected to various methods of persuasion. The Cabinet Office will keep records of all moneys collected in churches and will allocate funds for rebuilding and repairs. The government claims that through this new Office it has put things in order, guaranteed perfect freedom of development for all churches and religious bodies, and enabled them to concentrate on their religious and moral mission without any restrictions.

After the bill went into effect the Hierarchy permitted priests to take the oath of loyalty with reservations and to accept State salaries. But the bishops refused to comply themselves with the requirements of the act. They protested, moreover, that the concession thus made did not constitute a retreat or a capitulation. It was rather an adjustment made in the face of a new situation created by the fact that the bill which was previously not operative, became effective on November 1. The point was made that it is a normal procedure for the Church to carry on a determined fight against the regime's Church control bill as long as the measure was only under consideration and to revise tactics without any compromise of principle after the bill had become operative as law.

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ROMANIAN EXCLAUSTRATION

Fourteen hundred Romanian Sisters, ousted from their educational and charitable work and deprived of their homes, have returned to their families. They were given fifteen days in which to go to three small convents in Romania or to return to their families. They unanimously refused to enter the designated convents when they found that they would be obliged to live under superiors appointed by the communist authorities.

Sisters from two Byzantine rite convents have also joined their families after protesting against assignment to a convent where they would be subject to a schismatic abbess.

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RUSSIAN ORTHODOXY

The Russian Orthodox Church has practically become the established church in Russia; theological seminaries have been reopened and the State has provided the necessary buildings and equipment for them. Moreover, a government order authorizes the maintenance in rural districts of one church for every forty-eight square miles, almost the proportion that existed in pre-Revolution days. The Church has also received permission to do missionary work. Religious communities enjoy recognition as "craftsmen's cooperatives". Further, permission has been given this year for the traditional Epiphany processions and the blessing of the water on river shores.

Though it probably has no relation to the policy of favoring the Orthodox Church, another move of the Russian regime will have a tendency to promote the welfare of the family. This, one should predict, will be the effect of the order that now requires the existence of serious and well founded reasons for the granting of divorces, in addition to the failure of adequate attempts at reconciliation. An exception is made for the case in which the marriage contradicts the principles of communist morality.

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ISLAMIC INSTRUCTION IN EGYPTIAN SCHOOLS

Catholic schools had reason to be apprehensive over the issuance of circulars by the Ministry of Education requiring that all free

schools of Egypt should teach the Islamic religion and the Koran to Moslem pupils and erect a Moslem place of prayer on the premises. Islamic religion was also included in the examination program as an obligatory subject. Confronted with this pressure, the Catholic hierarchy notified Catholic institutions to adopt a policy of passive resistance. However, subsequent arrangements seem to have resolved the problem in a way that will relieve the Christian schools of the obligation of teaching the Islamic religion. Under the compromise plan, Moslem pupils are to be released during school hours for instruction which parents or guardians must give a pledge to provide.

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JAPANESE "EUGENICS"

The Japanese Eugenics Protection Law of 1948 was a re-enactment of a law passed in 1948, when the Nazi influence in Japan was great, with explicit provisions for the legalization of abortion. The law was re-enacted in 1949 with a further provision for legalization of birth control. As reenacted it authorizes sterilization by compulsion as well as by consent; gives unprecedented latitude to abortionists; and sets up government offices which promote artificial birth control. Under the license that is a corollary of the measure, high school girls are able to make large profits in peddling contraceptives, while brazen advertisements can be and are published in all sorts of media explicitly advocating the use of birth control drugs or instruments and motion pictures can show birth control techniques, without restraint except that adults only are admitted.

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SOUTH AFRICA MILITANTLY COMBATS CATHOLICISM

Reporting that the work of the Catholic Church in South Africa has expanded tremendously and that there are 648,248 non-white Catholics in the Union, Southwest Africa, and Rhodesia, as compared with 499,104 Dutch Reformed non-whites, the Synod of the Dutch Reformed Church has proposed the formation of a bureau to distribute literature combatting Catholicism in South Africa. The

Synod also took steps to prevent the entrance of Protestants as patients in Catholic hospitals, to insure that Catholic services are not held on the farms of Dutch Reformed members, and to warn members not to send their children to Catholic schools and institutions.

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SCHOOL CONFISCATION IN MADRAS

The policy of the Madras government by which it requisitions private and parochial school buildings, furniture and equipment if such schools appear to be lacking in efficiency has caused some Christian educators to close their institutions to avoid the risk of the loss of their property to the government.

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NATURAL LAW INSTITUTE AT NOTRE DAME

The third annual Natural Law Institute was held at the University of Notre Dame, December 9 and 10. The Chairman was Rev. John J. Cavanaugh, C.S.C., President of Notre Dame; the Honorary Chairman was Very Rev. Vincent J. Flynn, President of St. Thomas' College, St. Paul, Minnesota.

In connection with the Institute the following papers were read.

"The Natural Law and the Common Law", by Hon. Richard O'Sullivan, former King's Counsel.

"The Natural Law and Constitutional Law", by Prof. Edward S. Corwin, of Princeton University.

"The Natural Law and Canon Law", by Stephan Kuttner, J.U.D., professor of the History of Canon Law at The Catholic University of America.

"Natural Law and International Law", by Brig. Gen. Carlos P. Romulo, President of the General Assembly of the United Nations.

A bronze plaque was unveiled at the Institute. Beneath the plaque will be placed separate bronze tablets to record the programs of the Institutes held since their inception in 1947.

Book Reviews

A LEXICON OF ST. THOMAS AQUINAS based on the *Summa Theologica* and selected passages of his other works by Roy J. Deferrari, Ph.D., LL.D., and Sister M. Inviolata Barry, C.D.P., Ph.D., with the technical collaboration of Ignatius McGuiness, O.P., S.T.Lr. The Catholic University of America Press. Fascicle I, A-C, 1948: pp. 262; fascicle II, D-H, 1949: pp. 263-495. Price per fascicle, \$12.50; for set of 5 fascicles, \$62.50.

This new Lexicon of St. Thomas is an important project of The Catholic University of America. The two fascicles which have appeared indicate sound scholarship and a real ability to construct a Lexicon at once readable and serviceable.

The primary use of this Lexicon will be in the hands of theologians and philosophers but at the same time it will be of immense value to the study of vocabularies. It should also be available in the libraries of Seminaries to aid students of the actual text of the *Summa Theologica*. Since *The Code of Canon Law* demands the study of the doctrine of St. Thomas such a Lexicon as this will be of considerable value to both the professor and the student of theology.

The latinity of St. Thomas, as Dr. Ignatius Smith, O.P. points out in the preface to the Lexicon, varies in the different works of the Angelic Doctor. These variations are carefully set down in the discussion of the terms found in the fascicles to date. The sources from which these terms are drawn are clearly indicated.

For the student of Canon Law who must consult St. Thomas on natural and positive law, the terms most used in the *Summa Theologica*, e. g., *lex*, *praeceptum*, *praesul*, etc., have not yet appeared in published fascicles. Three terms, however, which are frequently used in law, viz., *aequitas*, *beneficium*, *dispensatio*, are satisfactorily described. This is sufficient indication that other legal terms to appear later will be equally well considered. When this Lexicon is completed all students of the various aspects of Sacred Science will be benefited. It is the hope of the reviewer that this Lexicon will have wide distribution.

EDWARD ROELKER

DE IURE RELIGIOSORUM AD NORMAM CODICIS IURIS
CANONICI by P. Ludovicus I. Fanfani, O.P. Editio tertia
revisa atque notabiliter aucta. Instituto Padano di Arti
Grafiche, 1949. Pp. 810. Price L. 2000.

The third edition of Fanfani's commentary on the Law of Religious contains over two hundred pages more material than earlier editions. This extension of commentary is distributed throughout the book. Absolutely new matter such as the legislation regarding Secular Institutes is integrated into the commentary.

Several points in this commentary should be mentioned as characteristic of its utility. First, the author has carefully considered and ably commented upon the qualities necessary for a valid vote. He also mentions how difficult it is to determine that one has voted for himself and thus invalidated his suffrage. Suggestion is made that Constitutions be changed to obviate an invalid election on this score.

The author has also carefully written about the various possibilities arising when the duty to support one's parents makes entrance into a religious community an unlawful act. This duty ought to be considered from all sides. Agreements between prospective religious and communities can sometimes be made to cover contingences.

Several appendices are printed in this volume. They are the usual documents found in commentaries on the Law of Religious. The index is satisfactory but the bibliography is too short. There are a number of typographical errors which annoy and should be corrected.

EDWARD ROELKER

THE CANON LAW DIGEST, Supplement through 1948 by
T. Lincoln Bouscaren, S.J., S.T.D., LL.D. The Bruce Publish-
ing Co., Milwaukee, Wisconsin, 1949. Pp. 271. Price \$2.50.

The periodical publishing of official documents relating to *The Code of Canon Law* is now complete through 1948. This useful digest is up to the standard of earlier volumes and supplements.

Since the latest publication of official documents in book form in 1943 many important documents and statements have been issued and made by the Holy See. These are included in the supplement at hand. Space does not permit even a reasonably complete enumeration of these matters. Attention, however, should be called to the following items.

Under canon 1169 is contained a private response of the Sacred Congregation of Rites. This statement declared that it is not expedient to use radiophonic instruments in place of bells made of metal. While this statement merely refers to bells, it shows the mind of the Holy See in regard to other electronic instruments which produce similar sounds but are not actually instruments of music. Organ sounds are thus produced. This ought to be kept in mind in reading advertisements in magazines. The Sacred Congregation of Rites has forbidden the introduction of novel rites in the Liturgy. Specific reference is made to the Offertory of the Mass. This prohibition is contained under canon 818.

The important Allocution of Pope Pius XII to the Auditors of the Roman Rota is found under canon 1869. This Allocution should be studied by all whose business it is to work in diocesan tribunals. Special emphasis is placed on the statement of the Pope in reference to moral certitude in marriage cases.

An Instruction of the Sacred Congregation of Seminaries and Studies is contained under canon 1365. This Instruction urges and orders the study of pedagogy in seminaries.

As usual, the index of this work is detailed and of considerable value.

EDWARD ROELKER

MARRIAGE PRELIMINARIES by E. J. Mahoney. The Newman Press, Westminster, Maryland, 1949. Pp. 93. Price \$1.00.

This book contains the Latin and English Text of the Instruction *Sacrosanctum*, June 29, 1941 with a suitable commentary. This text is well known in its original language and in its several translations. No more need be said about the actual text here.

The commentary of Canon Mahoney should be stressed not only as adequate but as containing items of more than passing interest.

It is remarkable that so much can be expressed in the few pages of this commentary. Many legal points antecedent to or concomitant with the instruction are briefly and clearly explained. Reference is made, for instance, to the binding force of the Instruction and to the usual way in which dispensations are granted by the Holy See and by the Ordinary of the diocese.

Canon Mahoney is confident that the Instruction will be increasingly observed and that the divergent points of local statutes will in time be reconciled. This confidence will soon be realized as experience will indicate the wisdom of the various points of the Instruction.

This book in small compass even pays attention to inferences that are reasonably deduced from the text of the Instruction. Some inferences were advanced by earlier commentators but the present volume has the advantage of containing the better opinions. In its field this volume is recommended.

Of considerable utility is the presentation of both blank and filled in forms. These are some of the most adaptable forms to come within the reach of the reviewer. They are brief and really to the point. Nothing superfluous is found. A short index is offered.

EDWARD ROELKER

**A PRACTICAL FORMULARY IN ACCORDANCE WITH THE
CODE OF CANON LAW** by the Reverend Stanley Pietrzyk,
J.C.D. Printed by The Pioneer Press, Little Rock, Arkansas,
1949. Pp. XVI-268.

The purpose of this book is to offer formulas which can be used in the various operations of ecclesiastical discipline. The author, an advocate and a procurator of the Roman Rota and the Apostolic Signatura, employs his experience in constructing these formulas.

The formulas suggested for use are logically arranged under a number of headings, e. g., forms concerning the diocesan Curia, the administration of the Diocese and concerning religious Orders and Congregations. Detailed points of administration are considered carefully and suitable formulas are offered for their efficient dispatch.

There is an undeniable need for such a book as the one at hand. Older formularies are rather difficult at times to obtain and few in the past were completely satisfactory. While no book in Canon Law will satisfy every reader, this book will amply supply the needs of diocesan officials, pastors and Superiors generally. Some formulas suggested here are somewhat long and perhaps verbose but adjustments can readily be made. In many cases English and Latin texts are presented.

Praise of this work cannot in every case be extended to include introductory points of Canon Law. There are some inaccuracies here. These are not precisely errors but the author's opinions are sometimes offered in a way that they may be considered as the best obtainable. The footnotes indicate where these opinions may be found but little is said about opposite and tenable opinions. This matter, however, casts no reflection on the purpose of this book and its attainment. It remains a useful volume in the hands of those who deal with administration. The table of contents is excellent. In addition there is an index of satisfactory detail and length.

EDWARD ROELKER

LEHRBUCH DES KIRCHENRECHTS begründet von Eduard Eichmann neu bearbeitet von Klaus Mörsdorf. I Band. Sechste Auflage. Verlag Ferdinand Schöningh, Paderborn, 1949. S. 528. Preis br. 14 kart. geb. 18.

The first volume of a new edition of the standard German textbook on Canon Law is now available. The volume contains commentary on the first and second books of the Code.

As an introduction to this work, there is a short discussion of rights and law and their relation to the Church. This leads to a review of the principal sources of Canon Law and to a description of Papal documents. The introduction is closed with a few pages on the relation between Church and State. This latter item is well-done especially as it considers the law of Concordats existing in Germany.

All the pertinent decrees and responses of the Holy See are incorporated in the preparation of this work. Several points of commentary are worthy of note. Mention can be made of two: the dis-

cussion on useful and continuous times and the exact differences between dispensation and similar institutes. As in every other commentary, complete agreement will not be extended to the authors in their opinions. Restriction of canon 24 to jurisdictional precepts is a case in point.

The footnotes to this volume give sufficient notice to special treatises but the general commentaries to which reference is made are for the most part the same time after time. The commentaries selected for reference are good ones but their constant repetition does not add to the usefulness of this work. This defect is all the more serious since the bibliography offered is scarcely satisfactory. What is indeed offered is found in the presentation of canonical jurisprudence. Outside of a few Latin and German works, books in other languages are largely although not entirely ignored.

Another disappointment is the absence of an index to the first volume of this commentary. Undoubtedly an index will be provided when the work is complete but, if volumes are sold separately, some consideration for the immediate purchaser should be given. The reviewer hopes that a new printing will correct this defect.

EDWARD ROELKER

NORMAE GENERALES JURIS CANONICI. *Commentarius Libri I Codicis Juris Canonici. Editio Altera penitus retractata et notabiliter aucta. Volumen Primum: Praenotanda Generalia, Canones Praeliminares, De Legibus Ecclesiasticis; Volumen Secundum: De Consuetudine, De Temporis Supputatione, De Rescriptis, De Privilegiis, De Dispensationibus.* Dr. Gommarus Michiels, O.F.Min.Cap. Olim Professor Juris Canonici in Universitate Catholica Lublinensi, in Universitate Quebecensi, et in Pontificio Instituto Romano Utriusque Juris. Typis Societatis S. Joannis Evangelistae Desclée et Socii, Parisiis - Tornaci - Romae, 1949. Vol. I, pp. xxii/705; Vol. II, pp. xx/783.

The first edition of this work of G. Michiels was published in 1929. In a relatively short time it was out of print and no longer available, doubtless, to the disappointment of many students of Canon Law. Hence this new, second edition should be doubly welcome, since it is completely revised and appreciably enlarged.

To attempt an understanding and application of the laws of *The Code of Canon Law* or of any ecclesiastical laws and other juridic dispositions without a knowledge and use of the General Norms of the First Book of the Code would result in utter futility. There are a number of good treatises on Book One of the Code. The present work ranks with the best of them. The current canonical literature has been considered and employed by the author in preparing his revision. This fact appears clearly manifest both in the body of the texts and especially in the annotations.

The introduction consists of appropriate and well-studied treatments of the fundamental concepts concerning law, canon law, and *The Code of Canon Law*. Thereafter the author addresses himself to the presentation of lengthy treatises in respect to the canons of Book One. There is an exhaustive tract on Title I, *De legibus ecclesiasticis*, which, in fact embraces most of the contents of the first volume. In the treatises contained there as well as in his other treatises the author derives his doctrine from the particular juridic historical sources, the principles of canon law, and current canonical literature. He presents his subject matter upon juristic and logical reasoning in a systematic arrangement. The result evinces a keen and searching investigation.

The treatises on the various canons are not in the category of easy armchair reading. The treatment proceeds step by step in the development of the subject in question. The author does not indulge in a rule of thumb solution of questions in a series of brief statements. The sustained discourse and interjected detail of presentation result in a manner of exposition which demands the reader's constant and studious attention, which in its turn is rewarded with authoritative information. The discussions, in fact, enlist interest and careful attention, whether or not one agrees with the reasoning or conclusion on a particular matter. Though one be not in accord with the view presented, the treatment is always worth serious consideration, suggests interesting juristic problems for further study, research and re-examination of the legal subject matter. The explanation, for example, of the concept of *communitas legis ecclesiasticae saltem recipiendae capax* (vol. I, 167-173; vol. II, 62-65) is incisive and thorough, and seems entirely acceptable and satisfying. At times the protracted disquisition

descends to minute refinements of the question, wherein the presentation is almost painfully precise in detailed treatment.

Perhaps over-refinement tends to beguile the author to offer statements which would seem to deserve reconsideration. He states, commenting on can. 20 (vol. I, 589): "...obvium est enim quod ius objectivum normativum, de quo supra, a iudice *materialiter* creatum formaliter ipsi legislatori supremo est adscribendum." To the present writer it does not at all seem obvious that the objective norm of law, created by the judge according to can. 20, is to be attributed to the supreme legislator. The legislator in can. 20 prescribes the requirement and method of creating a suppletory norm of action. He does not, however, in virtue of can. 20, in a manner similar to his approval of custom, approve the product, the suppletory norm created, as the author explains that he does: "...ideoque solus Superior ecclesiasticus dici potest auctor verus et proprie dictus normae consuetudinariae *formaliter* intellectae, ita quoque vis iudicialis... normae suppletoriae a iudice ad normam canonis 20 *materialiter* creata[e] tota quanta emanat a sola approbatione legislatoris supremi vi can. 20 (coll. can. 1608) legaliter et a priori concessa omni normae suppletoriae, quae revera satisfaciatur conditionibus in can. 20 expressis." It seems rather that the norm created by the judge receives its force not from can. 20, but in virtue of the provisions of can. 17, § 3 and can. 1904 (*res iudicata*).—Or again, the author undertakes to explain (vol. I, 590) the meaning of *certa de re* (can. 20): "...requiritur ut desit expressum praescriptum legis '*certa de re*', idest, *de materia* seu *specie casuum* ad quam pertinet casus concretus in praxi a iudice solvendus. '*De materia* seu *specie casuum*', inquam, et non '*de casu particulari concreto*', ut immerito asserunt quidam Auctores." But why, one is urged to ask, can *certa de re* not signify both *certa de materia seu specie casuum* and *de casu particulari concreto*? The expression *certa de re* seems to allow of the most general connotation possible, and hence to signify an entirely generic concept in the mind of the legislator. It seems that the author draws a distinction without a difference warranted in the text of the law. The present writer is not convinced that the author has given sufficient consideration to the juridic antecedents of can. 20 in this respect.

Frequently the author uses a style and method which is dissertational and argumentative. This feature is commendable. Many textbooks are very sparing in offering reasons for the author's view, if, indeed, a reason is given at all. The reader is required to accept on faith that the author has solid reasons for propounding his view. Obviously, such presentation is unfavorable, not to say unscientific, and is not compensated by the endeavor to bring a great deal of material within the compass of a single handy manual. Such brief commentaries by various authors serve on occasion to pave the way to a spurious *dubium iuris* concerning a given point of law. Under such conditions it is not at all preposterous to state that it is possible for authors to create the appearance of a *dubium iuris* rather than to discover a genuine one in the law. In this respect the present author properly insists (vol. I, 418-419, 490) that the question of the presence of a *dubium iuris* demands the careful examination of the problem by the evaluation of arguments pro and con, and not the mere fact that several authors make this or that their unsupported statement.

The annotations of the text offer in the aggregate a vast array of canonical sources, traditional and current canonical literature. They consist not merely of citations and quotations, but the author deftly employs them, as occasion demands, to elaborate details incident to the treatise at hand in conjunction with the views of other authors. There is also an ample general bibliography with a listing of principal periodicals, as well as a special bibliography to the respective treatises on the several titles of Book One of the Code.

The indexes, one to each volume, together with the extensive table of contents will be sufficient to guide the reader to his desired topic.

J. SCHMIDT

THE CATHOLIC UNIVERSITY OF AMERICA

Chronicle

GENERAL

At the November meeting of the Administrative Board of the National Catholic Welfare Conference, the following members of the Hierarchy were elected to serve the Conference for a year. Chairman of the Board: Most Rev. John T. McNicholas, O.P., S.T.M., Archbishop of Cincinnati. Vice Chairman of the Board and Chairman of the Department of Education: Most Rev. Francis P. Keough, D.D., Archbishop of Baltimore. Treasurer: Most Rev. John Mark Gannon, D.D., D.C.L., LL.D., Bishop of Erie. Secretary: Most Rev. John F. Noll, D.D., Bishop of Fort Wayne. Chairman of the Board of Lay Organizations: Most Rev. Robert E. Lucey, D.D., S.T.D., Archbishop of San Antonio. Chairman of the Youth Department: Most Rev. Richard J. Cushing, D.D., LL.D., Archbishop of Boston. Chairman of the Department of Social Action: Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington. Chairman of the Department of Catholic Action Study: Most Rev. Joseph E. Ritter, S.T.D., Archbishop of St. Louis. Chairman of the Press Department: Most Rev. Michael J. Ready, D.D., Bishop of Columbus. Chairman of the Legal Department: Most Rev. Emmet M. Walsh, D.D., Coadjutor Bishop of Youngstown. The following were asked to serve as Assistant Chairmen: Assistant Treasurer: Most Rev. William D. O'Brien, D.D., LL.D., Auxiliary of Chicago; Department of Education: Most Rev. Matthew F. Brady, D.D., Bishop of Manchester; Legal Department: Most Rev. Bryan J. McEntegart, D.D., LL.D., Bishop of Ogdensburg; Press Department: Most Rev. Thomas K. Gorman, D.D., D. Sc. Hist., Bishop of Reno; Department of Lay Organizations: Most Rev. Allen J. Babcock, D.D., Auxiliary of Detroit; Youth Department: Most Rev. Richard O. Gerow, D.D., Bishop of Natchez; Department of Catholic Action Study: Most Rev. John F. O'Hara, C.S.C., D.D., Bishop of Buffalo; Assistant Bishop in the Executive Department: Most Rev. Lawrence J. Shehan, D.D., Auxiliary of Baltimore; Department of Social Action (for hospitals): Most Rev. Karl J. Alter, D.D., LL.D., Bishop of Toledo; (for charities): Most Rev. Charles Hubert LeBlond, D.D., Bishop of St. Joseph; (adviser for rural life work): Most Rev. William T. Mulloy, D.D., Bishop of Covington; (adviser for family life work): Most Rev. Peter W. Bartholome, D.D., Coadjutor of St. Cloud.

Rt. Rev. Howard J. Carroll, D.D., was elected General Secretary and Very Rev. Msgr. Paul F. Tanner, Assistant General Secretary.

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The general meeting of the Hierarchy chose committee members as follows: American Board of Catholic Missions: Most Rev. Stanislaus V. Bona, D.D., Bishop of Green Bay; Committee for the Propagation of the Faith: Most Rev. Thomas J. McDonough, D.D., J.C.D., Auxiliary of St. Augustine; Com-

mittee on Christian Doctrine: Most Rev. Charles D. White, D.D., Bishop of Spokane; Committee on Motion Pictures: Most Rev. William A. O'Connor, D.D., Bishop of Springfield in Illinois; Committee on the National Organization for Decent Literature: Most Rev. William D. O'Brien, D.D., LL.D., Auxiliary of Chicago; Committee on the North American College: Most Rev. William T. Mulloy, D.D., Bishop of Covington.

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The Administrative Board of the National Catholic Welfare Conference received in mid-November reports from the various departments of the Conference. Items included in these reports were the following. The National Council of Catholic Women gained 503 in the number of women's affiliated organizations, a total of 5851. The National Council of Catholic Nurses reported that it is composed of 53 member councils. In the field of education, there are 2,304,965 children enrolled in grade schools; 482,672, in secondary schools; 299,807, in colleges and universities; and 23,965, in seminaries. The News Service supplies papers read by 45,600,000. The editors of the Confraternity edition of the Old Testament reported the completion of the translation of the Books of Exodus, Ecclesiastes, Wisdom, and Proverbs.

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His Eminence, Guiseppe Cardinal Bruno succeeds, as Prefect of the Sacred Congregation of the Council, Francesco Cardinal Marmaggi, who died November 3 at the age of 73.

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Archbishop Albert Levame, former Nuncio to Uruguay, succeeds the late Archbishop Arthur Hughes as Internuncio to Egypt and Arabia.

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The governments of Cuba and of Haiti have raised their ministries to the Holy See to the rank of embassies.

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Most Rev. Alberto Goni, O.F.M., Custodian of the Holy Land, has been named Latin Patriarch of Jerusalem, succeeding to a post vacant since the death of Patriarch Luigi Barlassina in September 1947.

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The first meeting of the Federation of Catholic Universities, established June 29, 1948 by a decree of the Sacred Congregation of Seminaries and Universities and consisting of twenty-six Pontifical universities, was held in Rome in the early Fall. Rt. Rev. Msgr. Patrick J. McCormick, Ph.D., Rector Magnificus of The Catholic University of America, was elected Vice President. Its President is Rt. Rev. Msgr. Honore Van Waeyenbergh, Rector Magnificus of the University of Louvain.

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On November 13, the Most Reverend Apostolic Delegate presided at a Mass celebrated by Abbot Wulstan Knowles, O.S.B., of St. Benedict's Abbey, Fort Augustus, Scotland, at St. Anselm's Priory, Washington, D. C., to com-

memorate and render thanks on the occasion of the silver jubilee of the foundation of the Priory.

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On October 2, His Eminence, Samuel Cardinal Stritch presided and preached the sermon at the fifteenth annual "Red" Mass celebrated in Holy Name Cathedral, Chicago.

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On October 4, His Eminence, Samuel Cardinal Stritch delivered the main address at a Catholic rally held in Memphis. The general theme of the rally was "A Prayer for the Conversion of Russia and Its Satellites and the Obliteration of Communism from the World."

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On November 20, His Eminence, Samuel Cardinal Stritch celebrated a pontifical Mass and preached the sermon in observance of the centenary of Holy Name Cathedral, Chicago.

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St. John's Major Theological Seminary, serving the five dioceses of Michigan, was dedicated by His Eminence, Edward Cardinal Mooney.

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On October 19, 20, Most Rev. Richard O. Gerow, D.D., celebrated the twenty-fifth anniversary of his consecration for the See of Natchez.

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On November 6, Most Rev. William O. Brady, D.D., S.T.D., celebrated a pontifical Mass in St. Joseph's Cathedral, Sioux Falls, to commemorate the sixtieth anniversary of the founding of the diocese (November 12, 1889).

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At the eighth annual "Red" Mass celebrated in St. Mary's Cathedral, San Francisco, the sermon was preached by Most Rev. Timothy Manning, D.D., J.C.D., Auxiliary and Chancellor of the Archdiocese of Los Angeles.

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On October 4, the Franciscan Friars of the Atonement celebrated at Graymoor the golden jubilee of their foundation. The sermon was preached by Very Rev. Ignatius Smith, O.P.

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The thirtieth anniversary of its founding was observed by the International Labor Organization, with representatives of sixty countries joining in the observance.

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On December 4, Most Rev. Moses E. Kiley, S.T.D., Archbishop of Milwaukee, celebrated a pontifical Mass to honor the national conference of the Catholic Educational Press held in Milwaukee December 2-4. The sermon was preached by Rev. Paul Bussard.

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November 6-9, the twenty-seventh annual convention of the National Catholic Rural Life Conference was held in Columbus under the auspices of Most Rev. Michael J. Ready, D.D., Bishop of Columbus. The Conference's 1949 Distinguished Service Plaque was awarded to Dr. Raymond Wiley Miller.

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November 17-22, the thirty-fifth annual meeting of the National Conference of Catholic Charities was held in Atlantic City. In conjunction with this meeting, sessions were held also by the Society of St. Vincent de Paul and the Apostolate of the Sea.

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December 11, 12, the Academy of American Franciscan History opened its annual meeting with a pontifical Mass celebrated in the Chapel of Trinity College by the Most Reverend Apostolic Delegate. The meeting paid special honor to the second centenary of the date of the sailing of Fra Junipero Serra from his native Majorca. The Academy award for 1949 was presented to Dr. Herbert E. Bolton.

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November 25, 26, a national convention of the Catholic Art Association was held at Marygrove College, Detroit.

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At its first meeting at Regis College, Denver, the American Catholic Psychological Association was formed.

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January 3, 4, the first annual meeting of the American Mariological Society will be held in Washington, D. C.

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November 20-22, the Columbus Institute on World Faith for World Peace was held in New York under the auspices of the World Alliance for International Friendship through Religion and of the Church Peace Union.

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The Stritch School of Medicine of Loyola University, Chicago, has been awarded a grant of \$200,000 by the National Advisory Council of the United States Health Service for the construction of cancer research facilities.

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The Atomic Energy Commission is providing a 2,000,000 volt electrostatic generator for use by the Notre Dame radiation chemistry project.

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October 14, Most Rev. Michael James O'Doherty, Archbishop of Manila, died and was buried after a Pontifical Requiem Mass celebrated by Most Rev. Egidio Vagnozzi, Apostolic Delegate to the Philippines. He was succeeded in office by Most Rev. Gabriel M. Reyes, former Archbishop of Cebu, who had recently been made Coadjutor in Manila.

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October 14, a Pontifical Requiem Mass was celebrated by Most Rev. Richard J. Cushing, D.D., LL.D., Archbishop of Boston, for the repose of the soul of Most Rev. Thomas M. O'Leary, D.D., late Bishop of Springfield, Massachusetts, who had occupied the See since September 8, 1921, and who died at the age of 74.

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On September 6, Most Rev. John K. Mussio, D.D., J.C.D., Bishop of Steubenville, celebrated a Pontifical Requiem Mass for the repose of the soul of Rt. Rev. James W. O'Brien, late Rector of Mt. St. Mary's Seminary, Norwood, Ohio.

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Robert E. Hannegan, former Postmaster General of the United States, died October 6 was buried from St. Louis Cathedral, St. Louis.

DIGNITIES

Most Rev. Emmet M. Walsh, D.D., formerly Bishop of Charleston, was named Titular Bishop of Rhaedestus and Coadjutor with the right of succession to Most Rev. James A. McFadden, S.T.D., LL.D., Bishop of Youngstown. He was installed on November 10 in St. Columba's Cathedral. He celebrated the pontifical Mass marking the occasion. The sermon was preached by Most Rev. Michael J. Ready, D.D., Bishop of Columbus.

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Most Rev. Leo Binz, D.D., formerly Coadjutor to the Bishop of Winona, has been named Coadjutor to Most Rev. Henry P. Rohlman, D.D., Archbishop of Dubuque. Most Rev. Francis M. Kelly, D.D., formerly Bishop of Winona, has been named Titular Bishop of Nasai. Most Rev. Edward A. Fitzgerald, D.D., formerly Titular Bishop of Cantanus and Auxiliary to the Archbishop of Dubuque, has been named Bishop of Winona.

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Most Rev. James H. Griffiths, S.T.D., has been named Titular Bishop of Gaza and Auxiliary to His Eminence, Francis Cardinal Spellman in the latter's capacity as Military Vicar.

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Most Rev. Francis E. Hyland, D.D., J.C.D., has been named Titular Bishop of Gomphi and Auxiliary to Most Rev. Gerald P. O'Hara, D.D., J.U.D., Bishop of Savannah-Atlanta.

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Rt. Rev. Msgr. Patrick J. McCormick, Ph.D., Rector Magnificus of The Catholic University of America, received the honorary degree of Doctor of Letters from the University of Louvain at the opening of the academic year. Eleven other honorary doctorates were awarded at the same time.

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November 25, Rt. Rev. Archabbot Denis Omer Strittmatter, O.S.B., D.D., was given the abbatial blessing at St. Vincent's Archabbey, Latrobe, Pa., by Most Rev. John F. Dearden, D.D., Titular Bishop of Sarepta and Coadjutor of

Pittsburgh. Most Rev. Hugh C. Boyle, D.D., Bishop of Pittsburgh, presided at the throne. The sermon was preached by Rt. Rev. Msgr. Edward L. Stephens, V.F., LL.B.

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Most Rev. Aloisius J. Muench, D.D., Bishop of Fargo and Apostolic Regent in Germany, acted as consecrating prelate at the consecration of Most Rev. Johannes Bydolek, D.D., Auxiliary of Hildesheim. Most Rev. Leo F. Dworschak, D.D., Auxiliary of Fargo, acted as one of the co-consecrators.

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Most Rev. Jean Capistran Cayer, O.F.M., D.D., was consecrated in Montreal as Titular Bishop of Cissi and Vicar Apostolic of Egypt. The consecrating prelate was the Most Reverend Apostolic Delegate to Canada.

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Very Rev. Felix Ley, O.F.M., has been named the first Apostolic Administrator of the Ryukyu Islands.

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Rt. Rev. Msgr. Edward W. Swanstrom, Executive Director of the National Catholic Welfare Conference's War Relief Services, has been named an honorary canon of Cologne Cathedral.

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Very Rev. Celestin J. Steiner, S.J., formerly President of Xavier University, has been named President of Detroit University.

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The following were named Protonotaries Apostolic: Rt. Rev. Msgrs. Edward J. Dougherty, of the Archdiocese of Dubuque; John M. Connor and Daniel C. Fletcher, of the Diocese of Oklahoma City and Tulsa; and Herman F. Hillenmeyer, of the Diocese of Covington.

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The following were named Domestic Prelates: Rt. Rev. Msgrs. Joseph F. Adams, John W. Barrett, Edward E. Broderick, Thomas A. Canty, Stanislaus P. Chyla, Vincent W. Cooke, Michael J. Fennessy, B. Ferring, William A. Gorey, Lawrence P. Hurkmans, John J. Kearns, Stephen E. McMahon, Raymond J. O'Brien, Stanislaus Radniecki, Bernard K. Szudzinski, Boleslaus Urba, and John T. Wagener, of the Archdiocese of Chicago; John A. Donovan, Alfred A. Hebert, Joseph V. Pfeffer, and Archibald B. Stitt, of the Archdiocese of Detroit; Arthur J. Breen, Raymond P. Duggan, Leo A. Jaeger, Loras T. Lane, and Patrick F. Malone, of the Archdiocese of Dubuque; Edward W. Carlin, Declan F. Carroll, Joseph Deimling, Thomas B. Ennis, F. Borgias Lehr, Carl J. Merkel, Joseph A. O'Dwyer, and Leo J. Streck, of the Diocese of Covington; Leo Blaere, Aloysius Jarzemski, and Francis Keller, of the Diocese of Grand Island; John H. Huhn, William Kiernan, William Reul, Chester Ropella, and George Schemmer, of the Diocese of Green Bay; Paul M. Van Dorpe and John J. Walde, of the Diocese of Oklahoma City and Tulsa; Michael J. Cannon and William J. Meredith, of the Diocese of Rich-

mond; James Bradley, Michael P. Braeling, William J. Butzer, Christopher J. Roche, and John G. Wolf, of the Diocese of Salina; and Michael J. Coghlan and Frederick Schwertz, of the Diocese of Wheeling.

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The following were named Papal Chamberlains: Very Rev. Msgrs. William H. Byron, Edward J. Kelly, Harry C. Koenig, Joseph T. Kush, James M. Lawler, Peter D. Meegan, Charles N. Meter, Ernest Primeau, Thomas J. Reed, Joseph A. Sehnke, and Edward J. Smaza, of the Archdiocese of Chicago; George J. Biskup, of the Archdiocese of Dubuque; Francis R. Mielech, Charles A. Towell, and John J. Walsh, of the Diocese of Covington; Henry Head and Edward Westenberger, of the Diocese of Green Bay; Charles Buswell, Cecil Finn, Gilbert Hardesty, Raymond Harkin, John Higgins, Don Kanaly, Stephen A. Leven, Gavan P. Monaghan, Alphonse Pierets, Victor J. Reed, and William Reid, of the Diocese of Oklahoma City and Tulsa; and Edmond M. Arpin, Cornelius J. Brown, Raymond M. Menard, and William H. Merchant, of the Diocese of Salina.

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Frank J. Lewis, K.C.S.S., of Chicago, was made a Knight of the Order of Pope Pius IX.

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The following were named Knights Commander of St. Gregory the Great: Joseph LaFartune, of the Diocese of Oklahoma City and Tulsa and Clarence E. Martin, of the Diocese of Richmond.

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Dr. Charles M. Caravati and Dr. Frederick P. Fletcher, of the Diocese of Richmond, were named Knights Commander of St. Sylvester.

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The following were named Knights of St. Gregory the Great: Thomas J. Condon, Joseph L. Kania, and John Krez, of the Archdiocese of Chicago; James G. Casey and John W. Koch, of the Archdiocese of Dubuque; Francis L. McCarthy and Paul C. Zembrodt, of the Diocese of Covington; John Borelli, Charles D. Carey, Tom Dee, Dr. Francis E. Dill, J. L. Donovan, Dr. Francis M. Duffy, Frank J. Havlik, F. C. Love, William Luecke, Dr. J. T. Martin, Joseph J. Quinn, and Ray F. Tener, of the Diocese of Oklahoma City and Tulsa; J. Addison Hagan and Paul D. Williams, of the Diocese of Richmond; and Paul D. Cameletti, of the Diocese of Wheeling.

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The Papal Medal *Pro Ecclesia et Pontifice* was awarded to the following: Kenneth E. Cook, National Director of the Catholic Service of the Boy Scouts of America for fourteen years; Mrs. Anna M. Baxter and Mrs. Ella B. Zentner, of the Archdiocese of Dubuque; Mr. and Mrs. C. J. D. Buswell, Mrs. Martha Hardesty, Pat J. Horan, Mrs. Elizabeth Horrigan, Mr. and Mrs. Henry Isenbart, Mr. and Mrs. Henry Ross, Mrs. Margaret Statham, Mrs. Neal Sullivan, Mrs. Helen M. Swift, Mrs. Lena Voegele, and Mrs. Johanna Von Elm, of the Diocese of Oklahoma City and Tulsa; Mrs. J. Adam Hess,

Mrs. Robert Schneid Sr., and Miss Clara Welty, of the Diocese of Wheeling; Miss Helen Becker, Mrs. Edward Healey and Joseph Nemmers, of the Diocese of Sioux Falls; and Mrs. William McDougall, of the Diocese of Salt Lake City.

The Papal Medal *Benemerenti* was awarded to the Baroness von Trapp.

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The following were named Ladies of the Holy Sepulchre: Mrs. J. Frank Martin and Mrs. John B. Sheehan, of the Diocese of Oklahoma City and Tulsa.

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Robert D. Murphy, the newly named Ambassador to Belgium, was given the State Department's Distinguished Service award for his work as adviser on German affairs and his superlative diplomatic skill in other advisory roles in the post-war period.

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Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington, presented the 1949 James J. Hoey awards for efforts in behalf of Interracial Justice to Dr. John J. O'Connor, Secretary of the Catholic Interracial Council of Washington, and M. C. Clarke, President of the Dunbar Life Insurance Co., of Cleveland.

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The first Cardinal Gibbons Medal awarded by the Alumni Association of The Catholic University of America was conferred on Dr. Carlton J. H. Hayes.

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November 5, Trinity College, Washington, D. C., at a convocation held in observance of its fiftieth anniversary, conferred honorary doctorates on Mother Mary Joseph Rodgers, M.M., Dr. Jane M. Hoey, and Dr. Helen C. White.

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THE RICCOBONO SEMINAR OF ROMAN LAW IN AMERICA

Date: October 28, 1950.

Author: Dr. Charles S. Lobingier, Ph.D., D.Jur., J.U.D., formerly legal adviser to U. S. Military Government in Korea.

Title: "Codification in Korea", a comparative review of the relation of the Korean Code in relation to other codes and to the legal situation in Korea prior to the American occupation, with special reference to the deficiencies of the Japanese Civil Code.

